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INTERSTATE COMMERCE COMMISSION REPORTS

VOLUME 40

**DECISIONS OF THE
INTERSTATE COMMERCE COMMISSION
OF THE UNITED STATES**

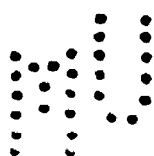
MAY, 1916, TO JULY, 1916

REPORTED BY THE COMMISSION



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1916**

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INTERSTATE COMMERCE COMMISSION.

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EDGAR E. CLARK.

JAMES S. HARLAN.

CHARLES C. McCHORD.

HENRY C. HALL.

WINTHROP M. DANIELS.

GEORGE B. MCGINTY, *Secretary.*

INTERSTATE COMMERCE COMMISSION REPORTS.

No. 7987.

CHEESE DEALERS ASSOCIATION COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted February 14, 1916. Decided May 24, 1916.

Charges assessed for heated car service in connection with shipments of cheese in carloads from points in Wisconsin to various interstate destinations not found unreasonable or unjustly discriminatory. Complaint dismissed.

F. M. Elkinton for complainant.

O. W. Dynes for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is an Illinois corporation with its principal office at Fond du Lac, Wis., purporting to represent the interests of 26 individuals, firms, and corporations dealing in cheese in Wisconsin and Illinois. By complaint, filed May 7, 1915, it alleges that the charges assessed by defendants for heated car service, on shipments of cheese in carloads from points in Wisconsin to points in Kansas, Missouri, Nebraska, North Dakota, and South Dakota are unreasonable and unjustly discriminatory. The condemnation of any charge for heated car service is asked.

Prior to December 1, 1914, defendants' tariffs did not provide for the assessment of additional charges for heated car service for shipments of perishable commodities requiring protection from frost, except potatoes. Shippers were permitted, however, to protect their shipments by the use of portable heaters, false floors, straw packing, etc., and other devices, for which a weight allowance was made in the tariffs. Effective December 1, 1914, defendants provided by appropriate tariffs that during the period from October 15 to the following April 15, inclusive, of every year they would furnish a protective

service against frost on all perishable commodities, including cheese, in carloads, but affording shippers the option of furnishing the protection themselves without charge as they had been doing. The charges now assessed by defendants, in the event that the shipper elects to have the protection furnished for him, are 4 cents per 100 pounds, subject to minimum weights in tariffs applicable, but not less than \$12 per car, for intrastate shipments, and for interstate shipments 5 cents per 100 pounds, minimum \$15 per car, between points in adjoining states, with an additional charge of 1 cent per 100 pounds, or minimum of \$3 per car for each additional state traversed.

The questions presented are: (1) Whether a charge for heated car service during the period of the year when damage from frost may be expected is proper; and (2) the reasonableness of the charges now in effect.

We have heretofore considered and approved similar charges and tariff rules when applied to shipments of potatoes, *Miller & Co. v. N. P. Ry. Co.*, 34 I. C. C., 154, and *Boston Potato Receivers' Asso. v. B. & A. R. R. Co.*, 25 I. C. C., 159. The same finding must be made here unless the circumstances and conditions surrounding the transportation of cheese and potatoes are substantially dissimilar.

Wisconsin is the largest cheese-producing state in the United States, shipping in 1914 approximately 52,000,000 pounds of all kinds of cheese. The shipments are first made in less-than-carload lots to various concentrating points and later are reshipped to destinations in carloads, usually in insulated cars. Cheese undoubtedly is susceptible to damage by frost. Defendants' witness testified that during the year 1914 over \$3,000 had been paid on claims for damage caused by frost. The American cheese sold by complainant is said to withstand an outside temperature as low as 15 degrees above zero, Fahrenheit, when loaded in an insulated car which has previously been heated. Other varieties of cheese, containing higher percentages of moisture, are more easily damaged by frost. Complainant's principal witness testified that in cold weather when the temperature ranges from 15 degrees to 20 degrees above zero shipments are made only when the weather reports are favorable and are never made when the temperature is lower than 15 degrees above zero. It is urged that heated car service is therefore necessary only on rare occasions.

Shippers of cheese know better than carriers can be expected to know what precautions ought to be taken against the elements in order to insure the safe transportation of their commodity, and under the rules in controversy are at liberty to exercise their own judgment relative to protection required for particular shipments. It does not appear that cheese is transported during the winter sea-

son under circumstances sufficiently unlike those surrounding the transportation of potatoes to warrant a charge for heated car service in the one case and not in the other, when such service is requested by the shipper.

The charges involved are substantially the same as those heretofore approved for shipments of potatoes and we find that they are not shown to be unreasonable or unjustly discriminatory. The complaint accordingly will be dismissed.

HARLAN, *Commissioner*, concurring:

In support of the charge, established after the announcement of the first report in *The Five Per Cent Case*, 31 I. C. C., 351, for a heated car service on winter shipments of cheese in carloads from Wisconsin points, the carriers defendant here point to the view expressed by the Commission in that case to the effect that every service performed by a carrier should be made to contribute reasonably to its revenues. The soundness of that principle and the propriety of its application in all such cases are clearly demonstrated upon this record, which is illustrative of the many services of special value that the carriers, without charge in addition to the rate, have performed in the past and still continue to perform for the comparatively few shippers who are in a position to make use of such services, although the cost thereof is spread, through the carriers' rates, upon the general shipping public.

40 I. C. C.

No. 8342.
MARQUETTE COAL COMPANY
v.
PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted January 25, 1916. Decided May 31, 1916.

Shipments of coal from Bolivar, Pa., to West Albany Transfer, N. Y., for beyond, reconsigned to the Albany Southern Railroad at Stuyvesant Falls, N. Y., via Hudson, N. Y., were moved to Stuyvesant Falls through Hudson and Hudson Upper, N. Y. Defendants applied a rate of \$1.90 per ton applicable from Bolivar to Hudson, declining to apply a rate of \$1.90 applicable to Hudson Upper. The Albany Southern Railroad was thereby required to pay the Boston & Albany Railroad a contract charge of 15 cents per ton for moving the shipment on its account from Hudson to Hudson Upper and deducted 15 cents per ton from complainant's price. A rate of 60 cents per ton applied on coal from Hudson to Stuyvesant Falls and no rate from Hudson Upper; *Held*, That the legal rate was the combination rate of \$2.50 per ton based on Hudson and that defendants legally applied the \$1.90 rate to Hudson. Complaint dismissed.

George J. Hatt, 2d, for complainant.
Clyde Brown for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the coal business, with its principal offices at Albany, N. Y. By complaint, filed September 22, 1915, it alleges that the charges collected by defendants for the transportation of 30 carloads of coal from La Colle colliery No. 1, at Bolivar, Pa., to Hudson Upper, N. Y., during June, July, and August, 1914, were unlawful in that the charges were assessed at a rate of \$1.90 per ton instead of a rate of \$1.85. Reparation is asked.

The shipments were made originally to West Albany Transfer, N. Y., but before arrival at that point were reconsigned at complainant's request to the Albany Southern Railroad, Stuyvesant Falls, N. Y., "via Hudson."

The Albany Southern is an electric line with rails extending from Rensselaer, N. Y., south through Stuyvesant Falls to Hudson Upper, a few miles from Hudson, N. Y. West Albany Transfer is on the New York Central Railroad, which connects with the Albany Southern at Rensselaer and with the Boston & Albany at Hudson. The Bos-

ton & Albany has a line through Hudson and Hudson Upper and had and still has an unpublished contract arrangement with the Albany Southern for the movement of freight in both directions between Hudson and Hudson Upper for that road at a charge of 15 cents per ton on carload freight moving at carload rates. Traffic moved from West Albany Transfer to Stuyvesant Falls by way of Hudson must also move through Hudson Upper.

The New York Central moved the shipments through West Albany Transfer to Hudson and turned them over there to the Albany Southern, which moved them to Hudson Upper through the instrumentality of the Boston & Albany and beyond Hudson Upper with its own facilities to Stuyvesant Falls.

A rate of \$1.90 applied from Bolivar to both Hudson and Hudson Upper with free reconsignment at West Albany Transfer upon orders received before the arrival of shipments at that point. The Albany Southern was not and is not a party to the rate to Hudson Upper, which was and is a joint rate participated in by the Boston & Albany on its own account and not on the account of the Albany Southern.

The Albany Southern published a rate of 60 cents per ton on coal from Hudson to Stuyvesant Falls, but did not publish any rate on coal from Hudson Upper. The two points are close together, but are not considered the same point by the Albany Southern. They are differently designated in Albany Southern tariffs and different class rates were and are maintained to and from both points from and to other points on the Albany Southern. No class rates applied on coal from Hudson Upper because the official classification which the Albany Southern's tariffs adopted did not provide any rating on bituminous and anthracite coal in carloads.

Defendants applied the \$1.90 rate applicable to Hudson on the theory apparently that complainant's instructions "via Hudson" meant delivery to the Albany Southern at Hudson through the Boston & Albany as its agent, instead of at Hudson Upper. On the same theory and under the contract arrangement described above the Boston & Albany charged the Albany Southern 15 cents per ton for moving the shipments from Hudson to Hudson Upper. The Albany Southern had contracted with complainant for the shipments on the assumption that the \$1.90 rate applicable to Hudson Upper would be applied, and upon settlement with complainant's sales agent deducted the charges which it had been compelled to pay to the Boston & Albany.

Complainant does not now contend, as alleged in the complaint, that a rate of \$1.85 should have been charged to Hudson Upper, but that defendants should have applied the \$1.90 rate applicable to Hudson Upper instead of the \$1.90 rate applicable to Hudson. In

that case the Boston & Albany's service would not have been performed for the Albany Southern, but for defendants, and the charge of 15 cents per ton collected by the Boston & Albany from the Albany Southern and ultimately borne by complainant would not have accrued. Complainant seeks to recover from defendants the sum deducted by the Albany Southern in settling with its sales agent.

The shipments were not billed to either Hudson or Hudson Upper but to Stuyvesant Falls, and apparently were billed to that point in entire good faith and with no reprehensible intention. The rate from Bolivar to Stuyvesant Falls, therefore, was the only rate legally applicable even though the Albany Southern was the consignee. Carriers are permitted to bill fuel coal purchased at points on connecting lines to local points on their own lines beyond their junctions with their connections, in order to secure transportation to the junction points at their connections' divisions of the joint rates applicable to the destinations selected instead of at the full rates applicable to the junction points. The only limitations are that the billing shall be genuine, that the shipments shall move to the points to which they are billed, and that they shall be given no rate advantage over commercial shipments from and to the same points. *Rates on Railroad Fuel and Other Coal*, 36 I. C. C., 1. Usually the practice benefits the consignee carrier adopting it. Here it operated to the consignee carrier's detriment. But the consequences of the practice in particular cases can not determine the rate legally applicable. If the billing to the actual destination on the consignee's line is genuine the shipment must be treated by the connecting lines exactly like an ordinary commercial shipment, whatever the disposition by the consignee carrier of the charges that accrue for the movement over its own rails. Effective May 15, 1915, the Albany Southern established a rate of 60 cents per ton on both anthracite and bituminous coal from Hudson Upper to Stuyvesant Falls and canceled its former 60-cent rate on bituminous coal from Hudson.

We find that the rate legally applicable from Bolivar to Stuyvesant Falls was the combination rate of \$2.50 per ton based on Hudson, and that defendants legally applied the \$1.90 rate applicable to Hudson instead of the \$1.90 rate applicable to Hudson Upper. Whether complainant is ultimately legally responsible for the charge of 15 cents per ton imposed by the Boston & Albany apparently depends upon an alleged contract of bargain and sale between complainant or its sales agent and the Albany Southern, which is entirely beyond our jurisdiction since defendants did not unlawfully impose the charge.

The complaint will be dismissed.

. No. 7487.
WESTERN FELT WORKS
v.
WABASH RAILROAD COMPANY ET AL

Submitted September 11, 1915. Decided May 29, 1916.

Official classification first-class rating on cotton shoddy garment padding in less than carloads from Chicago, Ill., to New York, N. Y., and charges for transportation accruing thereunder, not shown to have been unreasonable. Complaint dismissed.

H. J. Campbell and *W. N. Webb* for complainant.

N. S. Brown for Wabash Railroad Company.

Robert N. Collyer and *Albert L. Viles* for official classification lines.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of felt, with its principal place of business at Chicago, Ill. By complaint, filed November 16, 1914, it alleges that the first-class rate of 75 cents per 100 pounds charged by defendants for the transportation of numerous less-than-carload shipments of cotton shoddy garment padding from Chicago to New York, N. Y., during the period from October 4, 1912, to May 1, 1914, was unreasonable and unjustly discriminatory. Reparation is asked and the establishment of a reasonable rate for the future. Some of the shipments were made more than two years before the complaint was filed.

Cotton shoddy garment padding is low-grade felt used principally as inside lining for cheap clothing and is valued at from 12 cents per yard to 25 cents. The quality shipped by complainant is manufactured from felt clippings and waste from carding machines and contains from 10 per cent to 26 per cent of wool. The use of wool is necessary to interlace the fibers when the wet material is pressed into sheets between steel plates. The initial processes in the manufacture of the higher grades of felt used for lining expensive clothing are necessary in the manufacture of this material also. Finished felt ranges in value from 12 cents a yard to \$3 a yard. There is a wide variation and overlapping of intermediate values, depending upon

the weight of the material, the amount of wool it contains, and the degree of finish. The cheaper grades, including cotton shoddy garment padding, do not differ essentially from the more expensive grades. They consist of felt, and in the absence of specific ratings in the official classification are included within the designation "felt, not otherwise indexed by name," and rated first class in less than carloads.

Complainant contends that the rate assailed was unreasonable and unjustly discriminatory, but the real issue, and the one to which practically all of the testimony relates, is the unreasonableness of the official classification rating. The allegation of unjust discrimination has been abandoned.

No evidence was adduced that the rating assailed was intrinsically unreasonable. Complainant contends that it was and is relatively unreasonable and cites in comparison the official classification rating on cotton piece goods, n. o. i. b. n., and cotton shoddy lining, which is rule 25, or 15 per cent less than second class. The rating cited as applicable to cotton piece goods applies only on woven cloth made wholly of cotton, in the original piece or in mill-end remnants, and does not apply on partially or wholly manufactured articles. But the relative transportation conditions are not shown and the comparison therefore proves little. Cotton shoddy lining is a woven fabric having a cotton warp and a filling or coating of cotton shoddy that may or may not contain wool, and is used exclusively for lining horse blankets and coarse overcoats. It is valued at from 10 cents a yard to 25 cents. Generally the official classification rates wool and fabrics containing wool, first class. An exception is made of cotton shoddy lining because of the low value of the highest grades and because it is easily distinguishable from other fabric.

Prior to 1912 complainant described its shipments in official classification territory as cotton shoddy lining, but in that year was advised by inspectors that they came within the classification description of felt, n. o. i. b. n. This resulted in the application of higher rates, which complainant contends defendants must justify. But we find that there has been no increase in the rating legally applicable since January 1, 1910. Complainant argues that defendants should establish a schedule of rates, graduated according to value, applicable to cotton shoddy garment padding. Value, however, is not the sole controlling element in classification or rate making, and in the absence of a showing that the present rating and rates are unreasonable the contention is without merit.

Defendants assert that cotton shoddy garment padding and the various higher grades of felt are too closely related to permit of the application of different ratings and rates, and that in the absence

of a well-defined dividing line between the grades, uncertainty and possible discrimination would result from such an adjustment.

Cotton shoddy garment padding competes with hair cloth and linen canvas, both of which articles are rated first class in the official classification, but the evidence fails to establish that it is used in competition with either cotton piece goods n. o. i. b. n. or cotton shoddy lining.

We find that the rate assailed is not shown to have been unreasonable, and an order will be entered dismissing the complaint.

No. 7854.

TULSA TRAFFIC ASSOCIATION

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

FOURTH SECTION APPLICATIONS Nos. 963 AND 1766.

Submitted December 6, 1915. Decided June 5, 1916.

1. Upon complaint that class rates maintained by defendants from New Orleans, La., to Tulsa, Okla., are unreasonable and unjustly discriminatory; *Held*, That the evidence fails to show that the rates are unreasonable or otherwise in violation of the act.
2. Rates on certain commodities from New Orleans, La., and Galveston, Tex., not found unreasonable, but a readjustment by defendants of rates to certain Oklahoma points suggested.
3. Applications of defendants for relief from the long-and-short-haul provision of the fourth section with respect to lower class and commodity rates from New Orleans to Joplin and Neosho, Mo., than are contemporaneously maintained to Tulsa, Okla., granted.

E. N. Adams for complainant.

W. V. Hardie for Oklahoma Traffic Association, intervener.

C. S. Burg and *Thomas Bond* for Missouri, Kansas & Texas Railway Company and its receiver; St. Louis & San Francisco Railroad Company and its receivers.

H. A. Weaver for Kansas City Southern Railway Company and Morgan's Louisiana & Texas Railroad & Steamship Company.

40 I. C. C.

REPORT OF THE COMMISSION.

HALL, Commissioner:

Complainant is a voluntary association representing commercial and industrial interests of Tulsa, Okla. By complaint, filed March 26, 1915, it alleges that certain rates of the 45 defendant carriers, applicable on shipments to Tulsa, are unreasonable and unjustly discriminatory. These are class rates from New Orleans, La., commodity rates on bananas, citrus fruits, pineapples, coconuts, sugar, molasses, and coffee from New Orleans, and commodity rates on bananas and coconuts from Galveston, Tex. It also alleges that rates to Tulsa violate the long-and-short-haul rule of the fourth section in that they exceed rates on the same classes and commodities to Joplin and Neosho, Mo., to which Tulsa is intermediate. Applications of the defendants for relief from this rule of the fourth section in respect of rates on classes and on sugar, molasses, and coffee were heard in connection with the issues raised by the complaint.

The Oklahoma Traffic Association of Oklahoma City, Okla., intervened in support of the contention that rates from New Orleans to that city and to Tulsa should be maintained upon a parity.

Tulsa is in the northeastern part of the state, about 119 miles northeast of Oklahoma City, 52 miles northwest of Muskogee, Okla., and 120 miles southwest of Joplin and Neosho, in the southwestern corner of Missouri. It is a city of over 30,000 inhabitants and has important jobbing and manufacturing interests. Its merchants and manufacturers compete directly and actively with those at Joplin and Neosho and, to a less extent it is said, with those at Muskogee and Oklahoma City. It is served by four railroads, Joplin by seven, and Neosho by three.

I. CLASS RATES FROM NEW ORLEANS TO TULSA.

These are governed by the western classification. The following table shows rates for the first five classes and short-line distances in miles to various points. In this report rates are stated in cents per 100 pounds.

From New Orleans to—	Short-line mileage.	1	2	3	4	5
Tulsa, Okla.....	679	140.0	120.5	97.0	90.0	70.0
Oklahoma City, Okla.....	712					
Muskogee, Okla.....	626	130.0	113.0	97.0	90.0	70.0
McAlister, Okla.....	624	127.0	111.0	89.0	81.0	59.0
Joplin, Mo.....	712	110.0	85.0	65.0	53.0	38.0
Neosho, Mo.....	693					
Kansas City, Mo.....	867					

Oklahoma City and Tulsa take the same class rates except that to Tulsa the class C rate is slightly lower. Neosho takes the same rates as Joplin and Kansas City.

No showing was made by complainant to support its allegation that the class rates to Tulsa are unreasonable, and on brief it disclaims any contention that they are unreasonable *per se*. The gist of its complaint is that lower rates to Joplin, Neosho, and other competing points are unduly prejudicial to Tulsa.

The rates to Joplin and Neosho are controlled by the Kansas City Southern Railway which extends through those points to Kansas City, and, in connection with the Louisiana Railway & Navigation Company, constitutes the short route thereto. Kansas City is so situated with reference to Chicago and St. Louis, and the carrier competition for traffic to and from those trade centers was and is so keen, that it has been accorded comparatively low rates. There is also water competition between Kansas City and New Orleans. *Kansas City Missouri River Navigation Co. v. C. & O. Ry. Co.*, 34 I. C. C., 67. The Kansas City Southern observes the long-and-short haul rule of the fourth section, keeping Neosho and Joplin on the Kansas City basis, and other roads have met the rate established by it.

Complainant compares the relationship between the first class and the lower class rates to Joplin and Neosho with the corresponding relationship in class rates to Tulsa. As stated in *Iowa State Board Railroad Commissioners v. A. E. R. R. Co.*, 28 I. C. C., 563, 565, we have long realized the desirability of establishing some standard scale of percentage relation which all classes should bear to the first-class rate, but because of the great variety in percentages which now exists, and the many conflicts which would result between existing scales and any percentage scale which we might prescribe, we have not yet seen our way to establishing such a scale for general use.

As a practical matter, Tulsa merchants do not as a rule buy articles in New Orleans that move under class rates, the only shipments in appreciable quantities under such rates consisting of strawberries, and there is no showing that if the class rates were reduced any additional traffic would move.

The class rates to Tulsa are blanketed to other points in Oklahoma. They extend west to Oklahoma City on the St. Louis & San Francisco, hereinafter termed the Frisco, and to El Reno, on the St. Louis, El Reno & Western; south to Chickasha, on the Frisco, and across country to a point on the Missouri, Kansas & Texas north of Ada; and south of Tulsa on the Frisco through Sapulpa and Okmulgee to Holdenville.

It is well settled that unless circumstances and conditions affecting the transportation to any two points are substantially similar the

fact that one has lower rates than the other does not of itself constitute undue preference within the meaning of the act. The Kansas City Southern, the rate-making line to Joplin and Neosho, does not reach Tulsa. The lines that serve all three must meet the rate established by the short line if they wish to participate in the transportation. Complainant's contentions were ably presented and were supported by carefully prepared exhibits, but under the circumstances we are of opinion and find that the maintenance of higher class rates from New Orleans to Tulsa than to Joplin and Neosho, and the other points named in the complaint, has not been shown to result in undue prejudice or disadvantage to Tulsa.

II. COMMODITY RATES FROM NEW ORLEANS AND GALVESTON TO TULSA.

In considering commodity rates Tulsa, Oklahoma City, Muskogee, and Joplin have been taken as representative destinations.

SUGAR.

Rates on sugar from various producing and shipping centers are as follows:

To—	From Colorado.	From Utah.		From Pacific coast.		From New Orleans.	From Galveston.	From New York (ocean and rail).
		A.	B.	A.	B.			
Tulsa.....	38	58	63	63	68	38	33	45
Oklahoma City.....	40	58	63	63	68	40	35	49
Muskogee.....	40	58	63	63	68	35	32	42
Joplin.....	27	50	55	55	60	32	32	38

A, minimum 60,000 pounds; B, minimum 36,000 pounds.

Commodity rates on sugar from New Orleans to these destinations are maintained under circumstances similar to those governing the class rates. The rate from New Orleans to Kansas City, 32 cents, is maintained by the Kansas City Southern as a maximum to intermediate points on its line.

Tulsa merchants do not buy any considerable quantity of sugar in New Orleans, but secure most of their supply from Colorado, Utah, and the Pacific coast. Sugar is sold in this territory on the basis of the New Orleans price plus the freight rate from that point. and complainant desires a reduction in the delivered price at Tulsa rather than a reduced rate from New Orleans.

The rates on sugar have not been shown to be unreasonable or unduly prejudicial to Tulsa.

MOLASSES.

Rates on molasses from New Orleans and other shipping points are shown in the following table:

To—	From Colorado (see note).	From St. Louis.	From New Orleans.	From Galveston.	From New York (ocean and rail).
Tulsa.....	38	35	40	35	66
Oklahoma City.....	40	40	45	43	66
Muskogee.....	40	35	35	30	66
Joplin.....	27	34	30	25	54

NOTE.—Applies on refuse sirup, in tank cars, carloads.

The evidence regarding rates on this commodity indicates that there is about the same railroad competition as obtains with respect to sugar, except that competition from the Pacific coast and Atlantic seaboard is not encountered on molasses. The rate from New Orleans to Tulsa is not shown to be unreasonable or unduly prejudicial.

COFFEE.

The following table showing rates on coffee from leading shipping points comprises the evidence of record respecting this commodity:

To—	From Chicago.		From St. Louis.		From New Orleans.		From Galveston.		From New York (ocean and rail).	
	A.	B.	A.	B.	A.	B.	A.	B.	A.	B.
Tulsa.....	49	54	44	49	42	44	42	44	66	66
Oklahoma City.....	57	62	52	57	46	51	46	51	66	66
Muskogee.....	51	52	44	47	39	41	39	41	66	66
Joplin.....	33	33	28	28	35	35	35	35	30	30

A, green; B, roasted.

We do not find that the rates on coffee from New Orleans to Tulsa are unreasonable or unduly prejudicial.

Complainant's principal competition in the sale of bananas is from Muskogee, Bartlesville, and Vinita, Okla., Joplin, and other jobbing points in the same general territory.

In *Rates on Tropical Fruits from Gulf Ports*, 30 I. C. C., 621, we held that the rate from New Orleans to Kansas City should not be exceeded at intermediate points on the direct lines. As previously stated, Joplin and Neosho are intermediate to Kansas City on the short route of the Kansas City Southern and its connecting line. The rates seem to be properly aligned under the fourth section in accordance with our findings in that case. Under the circumstances we do not find that the maintenance of lower rates to Joplin and Neosho than to Tulsa is unduly prejudicial to the latter, or that the rate to Tulsa is unreasonable. The rate on bananas from Galveston to Tulsa is not shown to be unreasonable or unduly prejudicial.

There is little of record regarding rates on coconuts. In *Rates on Tropical Fruits from Gulf Ports*, *supra*, we said, page 634:

Coconuts are classified in western classification at fourth class, while bananas take third class; ordinarily therefore the rates on the former are lower than on the latter as might be expected, considering the characteristics of the two commodities, and examination of the tariffs of the petitioners shows that this is generally the case in respect to the rates involved herein. There are some instances, however, where the rates are the same and others where the difference between the rates on each is but slight.

From the table it will be observed that the rate on coconuts is 4 cents higher than on bananas from New Orleans to Tulsa, while the difference between the rates to Tulsa and Muskogee is 24 cents on coconuts and 5 cents on bananas. The rates on coconuts from New Orleans to Tulsa and Oklahoma City are manifestly out of line with other rates and should be readjusted.

It is not shown that the rate on coconuts from Galveston to Tulsa is unreasonable or unduly prejudicial.

Under the western classification pineapples are rated first class in less than carloads and third class in carloads. The third-class rate from New Orleans to Tulsa and to Muskogee is the same. No justification appears for the maintenance of a rate of 89 cents to Tulsa and Oklahoma City as compared with 63 cents to Muskogee. There should be a readjustment of these rates.

The record does not show that the rates on oranges, limes, tangerines, lemons, and grapefruit are unreasonable or unduly prejudicial to Tulsa.

III. FOURTH SECTION APPLICATIONS.

The short-line route from New Orleans to Tulsa is over the lines of the Louisiana Railway & Navigation Company, Kansas City

Southern, and Midland Valley. Of the four lines reaching Tulsa only two, the Missouri, Kansas & Texas and the Frisco, have routes to Joplin via Tulsa. While it is possible for the former to handle New Orleans-Joplin traffic through Tulsa, that carrier has a more direct route via Muskogee and Vinita. The distance to Joplin through Tulsa would be 981 miles, or about 131 per cent of the short-line distance of 712 miles. The short route of the Frisco through Tulsa to Joplin is 868 miles, or 122 per cent of the short-line distance. In *Rates on Tropical Fruits from Gulf Ports, supra*, and in other cases we held that where the circuitous lines were at a marked disadvantage in meeting the competition of the short lines, relief from the provisions of the long-and-short-haul rule of the fourth section should be granted. Accordingly, we are of opinion and find that the fourth section applications for authority to continue lower rates on classes and on coffee, sugar, and molasses from New Orleans and points taking the same rate or rates made with relation thereto to Joplin and Neosho than are contemporaneously maintained to Tulsa should be granted, provided the present rates to Tulsa are not exceeded.

The complaint will be dismissed, but complainant may again call our attention to the matter should defendants fail to make the readjustments suggested herein.

Appropriate orders will be entered.

40 I. C. C.

No. 8331.
D. E. MOWRY COMPANY
v.
NEW YORK, NEW HAVEN & HARTFORD RAILROAD
COMPANY.

Submitted December 6, 1915. Decided May 29, 1916.

Rate of 13 cents per 100 pounds charged for the interstate transportation of apples from New Hartford, Granby, and Simsbury, Conn., and Southwick, Mass., to Milford, Mass., not found unreasonable or unjustly discriminatory. Complaint dismissed.

D. E. Mowry for complainant.

S. S. Perry for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of cider and vinegar, with a mill at Milford, Mass. By complaint, filed September 18, 1915, it alleges that the rate charged by defendant for the interstate transportation of 11 carloads of cider apples from various points in Connecticut and Massachusetts to Milford during October, 1913, was unreasonable and unjustly discriminatory. Reparation is asked.

The shipments were made to complainant at Milford from New Hartford, Granby, and Simsbury, Conn., and Southwick, Mass., and moved to Milford over defendant's lines. Charges were collected in the total sum of \$673.87 on a total of 518,360 pounds of apples at the fifth-class rate of 13 cents per 100 pounds. A commodity rate of 10.5 cents applied on apples from the same points of origin to Sterling, Mass., established October 15, 1911. Complainant competes with the Sterling Manufacturing Company located at Sterling, and early in August, 1913, asked defendant for a rate of 10.5 cents to Milford. Defendant granted the rate asked, but too late for these shipments which complainant was unable to defer. Milford is about 43 miles east of Putnam, Conn.; Sterling about 40 miles north of Putnam. Shipments to both points from the points of origin in question move through Putnam. Complainant asks reparation on the basis of a rate of 10.5 cents per 100 pounds, and defendant expresses a willingness to make reparation on that basis. Other than

the citation of the 10.5-cent commodity rate to Sterling and the subsequent publication of a like rate to Milford, no evidence was submitted to show the 13-cent class rate to have been unreasonable. Nor is the showing sufficient to warrant a finding that unjust discrimination existed.

We therefore find that the rate assailed is not shown to have been either unreasonable or unjustly discriminatory, and the complaint will be dismissed.

No. 8195.

PRODUCE DISTRIBUTORS COMPANY

v.

LEHIGH VALLEY RAILROAD COMPANY ET AL

Submitted December 20, 1915. Decided May 29, 1916.

Charges collected for the transportation of a carload shipment of garlic packed in woven rattan baskets from New York, N. Y., to Seattle, Wash., found to have been without lawful tariff authority, but not found unreasonable or unjustly discriminatory.

S. J. Wettrick for complainant.

F. M. Dudley for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the produce business at Seattle, Wash. By complaint, filed July 29, 1915, it alleges that the charges collected by defendants for the transportation of a carload shipment of dried garlic and lemons from New York, N. Y., to Seattle in November, 1913, were unlawful, unreasonable, and unjustly discriminatory. Reparation is asked.

The shipment consisted of 29,705 pounds of dried garlic and one box of lemons which weighed 85 pounds. The rate charged on the lemons is not in issue. The garlic was imported from Italy and shipped in containers made of closely woven rattan with tops of the same material and construction fastened to the body of the container with cord. It was billed as 453 baskets of dried vegetables. Charges were collected on it originally at the fourth-class rate of \$2.25 per 100 pounds applicable under the western classifica-

tion on "garlic, dry, in baskets with solid or slatted wooden tops" in carloads, minimum weight 24,000 pounds. Subsequently defendants corrected the charges to the basis of \$1.875 per 100 pounds and made refund to complainant accordingly.

Transcontinental freight bureau tariffs in effect at the time named a commodity rate of \$1.50 per 100 pounds on "dried vegetables in barrels or boxes" in carloads, minimum weight 30,000 pounds, subject to a rule of the tariff of which the material provisions read as follows:

18. (a) When commodity rates * * * provide for articles "boxed" and do not provide for the same in crates, racks, bales, bags, bundles, or loose, they will take, when shipped in crates or racks, 25 per cent higher rate than in boxes * * *.

(b) Except as otherwise provided below, the term "boxed" used in this tariff is intended to mean packages made entirely of lumber, or lumber and metal, completely inclosing the contents and, unless otherwise provided, ratings on articles in wooden boxes will apply on the same articles in fiber-board, pulpboard, or double-faced corrugated strawboard boxes with or without wooden frames * * *.

(c) The term "crated" or "in crates" means inclosed on all sides, including bottom, with framework, so as to allow of the package being taken in and out of a car within the crate, and so as to fully protect the article from damage by contact with other freight. Packages consisting of loose wooden boards, inclosed in wooden frames, or consisting of basketwork (woven wood and wire) will be considered "crates."

Defendants construed section (c) of this rule as permitting the application of the crate rate to packages consisting of basketwork made of woven wood only, and on this understanding corrected the charges to the basis of \$1.875, or 25 per cent higher than the commodity rate, in accordance with section (a) of the rule. Complainant contends that for transportation purposes the container involved was a box; that the commodity rate of \$1.50 should have been assessed and that the rate applied was unlawful to the extent that it exceeded \$1.50. The container is said to have been 20 inches long, 14 inches deep, and about 18 inches wide, box shaped, and as durable as a box made of lumber, fiber board, pulpboard, or double-faced corrugated strawboard.

The phraseology of the rule quoted permits no such construction as defendants put upon it. Basketwork packages must be constructed of both wood and wire to come within the terms of the rule. On the other hand, the container did not come within the description of "boxed" as defined in the tariff, and the evidence does not justify a finding that it should be included with boxes. It is well recognized, of course, that carriers may make reasonable differences in rates and ratings dependent upon the containers in which commodities are shipped.

Defendants published no rate that could be applied under their commodity tariffs to garlic in containers like the container used, and no such rate is now published. The western classification also provides no rating for such shipments. The nearest approach to these containers among those named in the classification are baskets with solid or slatted wooden tops. The tops of the complainant's containers were not "solid or slatted wooden tops." It appears therefore that defendants published no rate applicable to the shipments and do not now publish any such rate. Complainant was and is entitled to a just and reasonable rate.

Complainant cites a combination rate of \$1.05 per 100 pounds published at the time on onions and onion sets from New York to Seattle, composed of the fifth-class rate of 80 cents from New York to Chicago, Ill., and a commodity rate of 75 cents thence to destination. Onions move in much greater volume than garlic and are much less valuable. The shipment involved was the second carload of imported garlic ever shipped from New York to Seattle. These differences justify a higher rate on garlic than on onions or onion sets.

The container appears as durable and secure as a crate as defined in the rule above quoted and considering the character of the commodity and the container in which it was shipped, we find that a reasonable rate for the future should not exceed that contemporaneously in effect on the same commodity in crates. The rate charged is not found to have been unreasonable or unjustly discriminatory.

An appropriate order will be entered.

40 I. C. C.

No. 8168.
CAIRO MILLING COMPANY
v.
MOBILE & OHIO RAILROAD COMPANY ET AL.

Submitted November 24, 1915. Decided May 31, 1916.

Rate charged by defendants on wheat transported from East St. Louis, Ill., milled in transit into flour at Cairo, and transported thence to Port Chalmette, La., for export, found unreasonable to the extent that it exceeded the rate contemporaneously applicable on flour from and to the same points, for export, plus one-half cent per 100 pounds. Reparation awarded.

J. B. Wenger for complainant.

Joseph M. Simon for Mobile & Ohio Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainant is a corporation engaged in the manufacture of wheat flour at Cairo, Ill. By complaint, filed July 20, 1915, it alleges that the rate of 13.5 cents per 100 pounds charged by defendants for the transportation of wheat in carloads for export from East St. Louis, Ill., to Port Chalmette, La., milled into flour at Cairo, was unreasonable and unjustly discriminatory to the extent that it exceeded a rate of 10.5 cents per 100 pounds. Reparation is asked.

The shipments of wheat were moved during the period from August 20, 1914, to September 20, 1914, by the Mobile & Ohio Railroad, hereinafter called defendant, from East St. Louis to Cairo, and the flour into which the wheat was milled was moved by the Mobile & Ohio Railroad and the New Orleans & Northeastern Railroad from Cairo to Port Chalmette, where it was subsequently exported. The flour aggregated 784,000 pounds and charges were finally collected at a combination rate of 13.5 cents per 100 pounds composed of a rate of 4 cents from East St. Louis to Cairo and a rate of 9.5 cents beyond. A joint rate of 10.5 cents per 100 pounds applied over defendants' lines from East St. Louis to Port Chalmette on flour for export, but without milling in transit. Effective November 23, 1914, subsequently to the movement involved, defendant established the present milling-in-transit arrangement at Cairo on shipments from and to these points, for export. No charge in addition to the transportation rate is imposed for this service. Effective January 20, 1915,

this rate was increased to 11.5 cents and on February 10, 1915, the present rate of 11.2 cents took effect by special permission.

Complainant does not challenge the reasonableness of either component of the rate assailed, but urges that it was unreasonable for defendants not to have provided transit at Cairo under the rate on flour from St. Louis for export.

Charges originally were collected on the basis of a rate of 10.5 cents per 100 pounds. On October 26, 1914, defendant asked leave to waive the collection of charges on these shipments in excess of the charges due at this rate, explaining that—

Failure to include the transit privilege on export traffic was due to an oversight on part of the Mobile & Ohio Railroad Company and lack of information that this privilege was necessary. As soon as this matter was brought to our attention, we issued supplement No. 5, to tariff No. 9300, I. C. C. A-1067, effective November 23, 1914, item No. 290, page No. 5.

Defendant subsequently made application in due form on the special docket April 1, 1915, for authority to waive the collection of 3 cents per 100 pounds. This authority could not be granted on the special docket and charges were collected from complainant on the basis of a rate of 13.5 cents. Defendant admitted at the hearing that it was unreasonable not to have provided transit at Cairo and expresses its willingness to make reparation on the basis of the 10.5-cent rate.

In *Southern Illinois Millers Asso. v. L. & N. R. R. Co.*, 23 I. C. C., 672, complaint was made that the defendants therein maintained higher rates on flour and other grain products from interior southern Illinois mills to the Atlantic seaboard than were contemporaneously maintained from St. Louis, a more distant point. Milling in transit was not accorded the interior milling points, and the combination of the wheat rates in and the flour rates out exceeded the rates on flour from St. Louis. We found in that case that the rates from St. Louis to the Atlantic seaboard on flour made from grain shipped into St. Louis from the west were parts of through rates from the points of origin of the grain, and therefore not to be compared with rates on flour from the interior milling points, but we found further that there was unjust discrimination against the interior milling points as compared with St. Louis in that the proportional rates from St. Louis permitted milling in transit at that point, and that to remove that discrimination milling in transit should be allowed at interior milling points at a charge not exceeding one-half cent per 100 pounds.

We find that it was unreasonable to apply on wheat from East St. Louis, milled in transit at Cairo, and transported to Port Chalmette for export, any rate higher than the rate contemporaneously applicable on flour from and to the same points, for export, plus one-

half cent per 100 pounds. We further find that complainant made the shipments as described and paid and bore charges thereon at the rate herein found to have been unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$196, with interest from July 20, 1915.

An order will be entered accordingly, but as the transit service involved is now published no order will be entered for the future.

No. 7931.

SPAULDING ELEVATOR COMPANY

v.

CANADIAN PACIFIC RAILWAY COMPANY ET AL

Submitted September 10, 1915. Decided May 24, 1916.

Rate of 30.3 cents per 100 pounds charged for the transportation of two carloads of oats from Assinibola, Saskatchewan, Canada, to Warren, Minn., found to have been unlawful. Tariff rate of 29.8 cents per 100 pounds found to have been unreasonable. Reparation awarded.

B. G. Dahlberg for complainant.

A. H. Lossow for Canadian Pacific Railway Company and Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the grain business at Warren, Minn. By complaint, filed April 19, 1915, it alleges that the rate of 30.3 cents per 100 pounds, charged by defendants for the transportation of two carloads of oats from Assiniboia, Saskatchewan, Canada, to Warren, was unreasonable and in violation of the long-and-short-haul rule of the fourth section of the act to the extent that it exceeded a rate of 20 cents contemporaneously applicable to Duluth, Minn. Reparation is asked.

The shipments moved over defendants' lines in March and April, 1914, and charges were collected on them in the sum of \$424.80 on

40 I. C. C.

140,200 pounds of oats, at a rate of 30.3 cents per 100 pounds. The tariff rate applicable was 29.8 cents per 100 pounds, composed of a rate of 20 cents to Duluth and a rate of 9.8 cents back to Warren, so that both shipments were overcharged.

Warren is intermediate to Duluth from Assiniboia by the direct route over which the 20-cent rate to Duluth applied. The maintenance of a higher rate to Warren than to Duluth was not protected by any fourth section application. Effective October 1, 1914, after the shipments had moved, the rate to Warren was reduced to 20 cents per 100 pounds, which rate is still in effect. Both defendants were represented by counsel, introduced no evidence in defense of the rate assailed, and neither one contests the case.

We find that the 30.3-cent rate assailed exceeded the tariff rate applicable and was unlawful; that the 29.8-cent rate legally applicable was unreasonable to the extent that it exceeded the present rate of 20 cents per 100 pounds; that complainant made the shipments involved as described and paid and bore charges thereon at the rate herein found to have been unlawful; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found to have been reasonable; and that it is entitled to reparation from defendants in the sum of \$144.40, with interest from April 10, 1914.

An order awarding reparation will be entered, but as the present rate has been in force for more than one year no order will be entered for the future.

No. 7469.
STATE CORPORATION COMMISSION OF THE COMMON-
WEALTH OF VIRGINIA
v.
CHESAPEAKE & OHIO RAILWAY COMPANY ET AL.

Submitted May 15, 1915. Decided June 6, 1916.

Upon the facts of record, *Held*:

1. Defendants' class rates from the Virginia cities to points in eastern North Carolina not shown to be unreasonable either in themselves or relatively.
2. Such rates not shown to unjustly discriminate against the Virginia cities or to unduly favor Cincinnati and Louisville. Complaint dismissed.

Jno. Garland Pollard; Francis B. James; E. E. Williamson; E. S. Goodman; W. A. Cox; W. M. Martin; John Wood; and Littleford, James, Ballard & Frost for complainant and for chambers of commerce of Richmond, Norfolk, Petersburg, and Roanoke, interveners.

R. Walton Moore, Frank W. Gwathmey, and Charles J. Rixey for defendants.

E. L. Travis for Corporation Commission of North Carolina, intervener.

J. C. Forrester for Chamber of Commerce of Greensboro, N. C., intervener.

REPORT OF THE COMMISSION.

McCHORD, *Commissioner*:

This proceeding involves the lawfulness of defendants' class rates from Richmond, Norfolk, Suffolk, Petersburg, Lynchburg, and Roanoke, Va., hereinafter called the Virginia cities, to a large number of points in the state of North Carolina. The complaint, filed by the State Corporation Commission of the Commonwealth of Virginia, alleges that the rates are unreasonable under section 1 of the act, and unjustly discriminatory under section 3. The chambers of commerce of the Virginia cities named, excepting Lynchburg and Suffolk, filed a joint petition of intervention, with allegations substantially the same as those of the complaint. The Corporation Commission of North Carolina and the Chamber of Commerce of Greensboro, in that state, filed separate petitions of intervention in opposition to the contentions of the complainant.

The rates in question are grouped both as to points of origin and points of destination. As a general proposition the rates from all

the Virginia cities to all points in a given group are the same. Destination groups on the Atlantic Coast Line, hereinafter called the Coast Line, are designated by numbers 1, 2, and 3; those on the Seaboard Air Line, hereinafter called the Seaboard, are designated by like numbers; and those on the Southern Railway, hereinafter called the Southern, are designated by numbers 1 and 2. Broadly speaking these groups embrace all points in the state of North Carolina, including Statesville, Charlotte, and points east thereof, excepting Wilmington, Newbern, and perhaps a few others at or near the coast. To some of the points in group No. 1 on the Coast Line the rates from Lynchburg and Roanoke are higher than the group rate from the other Virginia cities. All rates herein stated are in cents per 100 pounds. The rates under attack, taking the numbered classes for illustration, are shown in the following table:

From Virginia cities to—	1	2	3	4	5	6
Group 1.....	61	51	42	32	28	21
Group 2.....	68	58	48	38	33	25
Group 3.....	80	70	60	50	40	32

For many years the carriers have applied from Cincinnati, Ohio, and Louisville, Ky., to the Virginia cities a system of basing rates, used in making through rates to points in North Carolina, as follows:

Class.....	1	2	3	4	5	6
Rate.....	32	28	22	15	12	10

Combinations of these basing rates with the local rates from the Virginia cities, using group 1 on the Coast Line for illustration, resulted in through rates as follows:

	1	2	3	4	5	6
Cincinnati and Louisville basing rates.....	32	28	22	15	12	10
Virginia cities rates to group 1.....	61	51	42	32	28	21
Through rates.....	93	79	64	47	40	31

Through rates made up in that manner were in effect for more than 25 years prior to June 20, 1914. On that date the carriers published and made effective reduced through rates from Cincinnati and Louisville to the North Carolina points, which for the numbered classes are as follows:

From Cincinnati and Louisville to—	1	2	3	4	5	6
Group 1.....	82	71	56	41	34	27
Group 2.....	89	78	62	47	39	31
Group 3.....	101	90	74	59	46	38

The reductions were the same to all the groups, and by classes were:

Class.....	1	2	3	4	5	6
Cents.....	11	8	8	6	6	4

The new rates were brought about by establishing proportional rates from the Virginia cities on traffic from Cincinnati and Louisville and from points beyond, which are lower than the local rates from the Virginia cities by the amounts last above mentioned. There were no reductions in the rates from the Virginia cities proper.

The proposed reduction in these rates was the subject of inquiry by this Commission in *Rates to North Carolina Points*, 29 I. C. C., 550. The carriers asked for relief from the long-and-short-haul rule of the fourth section in order to establish and apply such rates via routes through Asheville, N. C., and other southern gateways. The complainant in this proceeding and the chambers of commerce of said Virginia cities, excepting Lynchburg and Suffolk, intervened in that case and presented testimony and argument in opposition to the adjustment proposed. These Virginia interests are together hereinafter called complainants. Their contentions in the former case were, in substance, that the Virginia cities had theretofore enjoyed an advantage to which they were entitled by reason of their location on strong lines of railroad with high density of traffic; that the suggested new adjustment was an attempt by shippers of North Carolina to deprive the Virginia cities of their rightful advantage and thus to discriminate against them; and that the rates proposed were the outcome of duress and coercion by the state of North Carolina and were the price of a dearly bought peace between the carriers and the officials and people of that state. In disposing of this aspect of the controversy the Commission said:

In *Charlotte Shippers' Asso. v. S. Ry. Co.*, 11 I. C. C., 108, the Commission had occasion to examine the rates from western points to Charlotte and other points in North Carolina. We then found the low rates to the Virginia cities and the relatively high rates to points in North Carolina to be a source of irritation and complaint, and the view was expressed that such rates would always be regarded by the shippers as an injustice and that their discontent would prove an embarrassment to the roads. The Commission recommended that the carriers consider the establishment of rates which should be produced by the addition to the proportional rates to the Virginia cities of something less than the full locals from the Virginia cities to points of destination in North Carolina. That, as we see it, is what will be brought about by this adjustment, and we fail to see in the contention of the Virginia cities how undue discrimination or any discrimination whatever against those cities will result from the proposed adjustment, which, in principle, accords with the adjustment prescribed by us for Durham and Winston-Salem in *Corporation Commission of N. C. v. N. & W. Ry. Co.*, 19 I. C. C., 303.

As already indicated, the reduced through rates are made up of the basing rates from Cincinnati and Louisville to the Virginia cities plus the new proportional rates beyond. The alleged discrimination

is based on the theory that such reduced through rates, in the absence of similar reductions in the rates from the Virginia cities proper, unduly favor Cincinnati and Louisville to the disadvantage of the Virginia cities. There may be and doubtless is some degree of competition between the Virginia cities on the one hand and Cincinnati and Louisville on the other in supplying the markets of North Carolina, but the showing of record in this respect is very meager and indefinite. Counsel for complainants stated at the hearing, and reiterated in their opening brief and on oral argument, that their chief reliance was on section 1 of the act. They subsequently asked for and were granted a reargument on the question of discrimination in which they insisted that the rates attacked are unduly prejudicial to the Virginia cities as compared with the reduced through rates from Cincinnati and Louisville. The evidence does not show, however, that under the present rate adjustment there is discrimination, undue or otherwise, against the Virginia cities; and upon careful consideration of all the facts of record bearing upon this question, and of the matters presented on the reargument, we find nothing that would justify a change of the views we expressed in *Rates to North Carolina Points, supra*.

The specific allegation under section 1 of the act is that the class rates from the Virginia cities to the North Carolina territory "are unjust and unreasonable, both relatively and *per se*." The complainants contend, in substance, that the long existence of the former rate adjustment should be regarded as proof of its reasonableness, and they insist that the disruption of that adjustment by the reduced through rates of June 20, 1914, brought about a situation which makes the rates from the Virginia cities proper unreasonable in themselves, and relatively, because "out of proper relation to and out of proper adjustment with" the reduced rates. They further contend that the rates from the Virginia cities are unreasonable as compared with lower intrastate rates for similar distances in the states of Virginia and North Carolina, respectively.

There is dispute as to whether the reduced rates were voluntarily established by the carriers. They were the direct outcome of a compromise between the authorities of the state of North Carolina on the one hand and the railroads serving the state on the other hand of a dispute as to the propriety of the former adjustment. The state insisted that its rates were unreasonable as compared with rates to the Virginia cities, and that by reason thereof the Virginia cities were unduly favored. The carriers insisted that the adjustment was reasonable and fair, and especially that the rates to North Carolina were not unreasonable in themselves. This dispute was the source of unceasing irritation and complaint for many years, until

finally the situation became so acute that the public interests as well as the interests of the carriers demanded a settlement. To effect such settlement a revision of the rates from the west to North Carolina was necessary, and a system of proportional rates somewhat less than the local rates from the Virginia cities, to be used in constructing through rates to North Carolina from Cincinnati and Louisville and from points beyond, was agreed on as already above set forth. The carriers did not, at any time during the negotiations which led to the compromise, concede that the former rates were excessive or unreasonable. On the contrary, they contended that measured by the generally accepted standards of reasonableness the former rates to North Carolina were not unreasonable; but they were confronted by a situation in North Carolina which imperatively demanded some concessions on their part in order to secure a settlement of the irritating controversy. The insistence by the state was not so much that the former rates to North Carolina were in themselves unreasonable, but that as compared with rates to the Virginia cities they were unjust and unfair to North Carolina. Any settlement of the controversy, therefore, necessarily involved a change of relationship in the rates from the west as between North Carolina and the Virginia cities. This change was the outcome of the compromise, and thus was brought about the situation of which the Virginia cities now complain. Under the circumstances it would be unfair to the carriers to say that the reduced rates were voluntarily established otherwise than in the sense that they were agreed to in order to secure a settlement of the long continued controversy with the state. They were not voluntary in any sense that would justify their consideration as evidence that the former rates were unreasonable. As expressed by some of the witnesses, the reduced through rates were agreed to "as the price of peace."

It is true that in determining the reasonableness of rates, due consideration of their relation to other rates of the various carriers serving the same or competing localities should be given. In other words, section 1 of the act contemplates that rates to be just and reasonable must be relatively fair as between localities similarly situated, as well as reasonable *per se*. This general proposition is supported by numerous authorities, of which frequent citations are made in the briefs of counsel. But while the relationship of the rates involved in this case was changed by the tariffs of June 20, 1914, we do not find that the record justifies the contention, so earnestly urged by the complainants, that the rates from the Virginia cities were by such tariffs thrown "out of proper relation to and out of proper adjustment with" the through rates from the west. Such contention necessarily implies that the former relationship which

caused the controversy between the carriers and the state of North Carolina was equitably just and proper, whereas it was not until the compromise of that controversy by the new rate adjustment that peace and harmony were established where contention and strife had existed for many years. The rates which the complainants seek to have established from the Virginia cities proper are in most cases identically the same as the proportional rates now in effect. To establish the rates asked for would at once restore the old relationship, and this would undoubtedly cause a renewal of the old controversy. This Commission pointed out to the carriers more than 10 years ago the conditions which were responsible for that controversy, and in the *Charlotte Shippers Case*, already referred to, in suggesting a means whereby the carriers themselves might relieve the situation, we recommended a system of proportional rates to North Carolina territory on practically the same principle that underlies the present reduced rates, and we then observed that no other method would serve to remove the irritation and complaint growing out of such conditions. In *Rates to North Carolina Points, supra*, we in effect approved the new adjustment as substantially in accord with our previous recommendation, and said in substance that no injustice to the Virginia cities could result therefrom. The relatively shorter distances from the Virginia cities to the North Carolina territory than from Cincinnati and Louisville to the same territory are relied on in support of the contention that the rates from the Virginia cities are unreasonable. The element of distance is an important matter to be considered in determining the reasonableness of rates in their relation to other rates with which they are compared, but distance alone is not controlling, and in many cases must yield to other and more weighty circumstances and conditions. *Corporation Commission, North Carolina, v. N. & W. Ry. Co.*, 19 I. C. C., 303, 308-309. The present case is an apt illustration of this principle.

A question is raised as to the basis of the 32-cent scale of basing rates from Cincinnati and Louisville to the Virginia cities. The testimony of the carriers is to the effect that such scale was arrived at by deducting from the rates from Chicago to the Virginia cities the rates from Chicago to Cincinnati and Louisville, as follows:

	1	2	3	4	5	6
From Chicago to Virginia cities.....	72	62	47	32	27	22
From Chicago to Cincinnati and Louisville.....	40	34	25	17	15	12
From Cincinnati and Louisville to Virginia cities.....	32	28	22	15	12	10

The theory is that the Chicago-Virginia cities rates, which were and are influenced by trunk line conditions conducive to a low level of rates, were first established, and that the 32-cent scale was the incidental result of subtracting the Chicago-Cincinnati and Louisville scale in the manner just shown. The complainants say the 32-cent scale was established by the Louisville & Nashville and Cincinnati, New Orleans & Texas Pacific railways, to be used in making through rates from the west to North Carolina territory, and was not influenced in any manner by the low level of the Chicago-Virginia cities rates, but merely represented competitive market conditions at Chicago on the one hand and at the cities of Cincinnati and Louisville on the other. In other words, their contention is that the through rates from Cincinnati and Louisville to North Carolina territory were established without regard to trunk line conditions, and that the rates from Chicago to the same territory were then made higher by differentials of 40 cents first class. This they assert brought about a definite and fixed relationship between the rates from Cincinnati and Louisville to North Carolina on the one hand, and the rates from the Virginia cities to the same territory on the other hand. It is unnecessary to state in detail the influences which resulted in a relatively low level of rates from the west to the Virginia cities. It appears in this case, as well as in numerous others, that such rates were made under competitive conditions, and therefore can not properly become the bases of comparison with rates from the Virginia cities to points which are not subject to similar influences. We do not think it a matter of distinctive importance whether the 32-cent scale was brought about by the one method or the other. When the former rates to this North Carolina territory were established from the west and from the Virginia cities, a relationship between them naturally and logically resulted; but it was not a fixed and established relationship in the sense that either set of rates was dependent upon the other, or that a change in the rates from the west would necessarily involve a relatively similar change in the rates from the Virginia cities. That for many years the differences between the rates from the west and the rates from the Virginia cities to North Carolina were the same as the 32-cent scale is not questioned, but the carriers do not admit, nor do we think the record shows, that such differences represented at any time a definite, fixed, or established relationship, in the sense contended for by the complainants. As already pointed out, the former adjustment was never satisfactory to shippers of North Carolina, and by sheer force of the conditions produced by it, the carriers were compelled to bring about the readjustment of which complaint is here made. We do not think the reductions which were necessary to that end, when con-

sidered in the light of all the circumstances and conditions shown of record, should be given weight as evidence against the reasonableness of the rates from the Virginia cities. There has been a great deal of discussion of the new relationship by counsel in their briefs, to all of which we have given careful attention.

On the facts of record bearing upon this branch of the inquiry, considered in the light of former cases involving rates to this North Carolina territory, we fail to find that the present rates from the Virginia cities proper are out of just and reasonable proportion to the through rates from the west, or that they are unfair or unduly prejudicial to the complaining Virginia interests. We are convinced by the record that the public interests are served in a more equitable manner under the new adjustment than they were under the old.

The complainants' further contention of unreasonableness in the rates from the Virginia cities is based on comparisons with intrastate rates in North Carolina and Virginia. As already pointed out, the rates in question are grouped, and no change in this respect is asked. The group of origin includes all the Virginia cities, and the groups of destination are indicated by numbers as stated above. The complainants compare the rates from the Virginia cities to the groups on the Coast Line and the Seaboard with the North Carolina intrastate distance rates published by those lines. As to the two groups on the line of the Southern the rates from the Virginia cities are compared with a composite of the Virginia and North Carolina intrastate scales. These comparisons show the interstate rates generally higher than the intrastate rates; and because the transportation conditions are in most respects identical, whether the business is interstate or intrastate, the complainants insist that the interstate rates are unreasonable. Representative results of such comparisons are shown in tables compiled from complainants' exhibits, in which rates on the numbered classes from Richmond, Norfolk, Petersburg, and Suffolk to group 2 points on the Coast Line and the Seaboard, and from Richmond, Norfolk, Suffolk, and Lynchburg to group 2 points on the Southern, are used for illustration, as follows:

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ATLANTIC COAST LINE.

	1	2	3	4	5	6
Virginia cities interstate scale (average distance 192 miles).....	68.0	58.0	48.0	38.0	33.0	25.0
North Carolina intrastate scale for distance of 192 miles.....	56.0	49.0	41.0	31.0	28.0	21.0
Difference.....	12.0	9.0	7.0	7.0	5.0	4.0

SEABOARD AIR LINE.

	68.0	58.0	48.0	38.0	33.0	25.0
Virginia cities interstate scale (average distance 243 miles).....	68.0	58.0	48.0	38.0	33.0	25.0
North Carolina intrastate scale for distance of 243 miles.....	65.0	55.0	45.0	36.0	30.0	23.0
Difference.....	3.0	3.0	3.0	2.0	3.0	2.0

SOUTHERN RAILWAY.

	68.0	58.0	48.0	38.0	33.0	25.0
Virginia cities interstate scale (average distance 245 miles).....	68.0	58.0	48.0	38.0	33.0	25.0
Composite of Virginia-North Carolina intrastate scales for distance of 245 miles.....	62.5	52.0	42.0	32.0	27.5	21.0
Difference.....	5.5	6.0	6.0	6.0	5.5	4.0

The defendants objected to the use of the intrastate rates as bases of comparison, and in support of their objection submitted evidence to the effect that the North Carolina rates were established by the authorities of that state over their protest, and are operated only in obedience to the command of the state statute. They contend that such rates can not be regarded as voluntary, and should not be accepted as standards whereby to determine the reasonableness of the interstate rates. It was pointed out that, excepting the Virginia state rates, the North Carolina scale is the lowest operated anywhere in the south; also, that the Virginia rates in effect on the main line of the Southern are the result of conditions which forced them to a low level; that they were originally established by the Richmond & Danville road to meet competition by the Chesapeake & Ohio, and were inherited by the Southern when the latter became the owner of the Richmond & Danville lines.

State-made rates as a standard of reasonableness are entitled to weight in connection with interstate rate considerations. *Baltimore Switching Charges*, 32 I. C. C., 376, 379; *Freight Rates from Minnesota Points*, 32 I. C. C., 361, 363. In deciding this and similar cases we must consider all the evidence and circumstances surrounding the interstate situation, as well as the conditions which brought about the intrastate adjustment. *Merchants Exchange of St. Louis v. B. & O. R. R. Co.*, 34 I. C. C., 341; *Merrill & Bros. v. I. C. R. R. Co.*, 36 I. C. C., 523, 524. These well-established principles apply forcefully to the comparisons submitted by the complainants in this case.

In an exhibit filed by the defendants the intrastate scales of rates published by the Southern Railway in the states of Virginia, South Carolina, Georgia, Alabama, Tennessee, and Mississippi are compared with the North Carolina scale published by the same line. From this exhibit it appears that the North Carolina rates are lower than those of any of the other states except Virginia, and also lower than the averages of all the other scales including that of Virginia. This is shown by the tables next below, which give the rates of the Southern in the several states and the averages of such rates, excluding the North Carolina scale, for distances of 190 miles, 240 miles, and 280 miles, respectively, using the numbered classes for illustration:

FOR 190 MILES.

	1	2	3	4	5	6
North Carolina.....	61.0	51.0	42.0	32.0	28.0	21.0
Virginia.....	50.0	43.0	33.0	23.0	19.0	16.0
Alabama.....	85.0	73.0	61.0	49.0	40.0	34.0
South Carolina.....	66.0	56.0	48.0	43.0	35.0	27.0
Georgia.....	85.0	73.0	61.0	49.0	40.0	34.0
Tennessee.....	66.0	58.0	54.0	41.0	35.0	30.0
Mississippi.....	76.0	61.0	50.0	42.0	36.0	32.0
Average.....	71.2	60.6	51.1	31.1	34.1	28.5

FOR 240 MILES.

North Carolina.....	65.0	55.0	45.0	35.0	30.0	23.0
Virginia.....	58.0	48.0	38.0	28.0	24.0	18.0
Alabama.....	93.0	85.0	68.0	55.0	43.0	36.0
South Carolina.....	71.0	61.0	53.0	48.0	40.0	29.0
Georgia.....	93.0	85.0	68.0	55.0	43.0	36.0
Tennessee.....	75.0	65.0	60.0	45.0	35.0	30.0
Average.....	78.0	68.8	57.4	46.2	37.0	29.8

FOR 280 MILES.

North Carolina.....	66.0	56.0	46.0	36.0	31.0	23.0
Virginia.....	64.0	53.0	43.0	32.0	28.0	23.0
Alabama.....	98.0	90.0	71.0	59.0	45.0	40.0
South Carolina.....	75.0	65.0	57.0	52.0	44.0	31.0
Georgia.....	98.0	90.0	71.0	59.0	45.0	40.0
Average.....	83.7	74.5	60.5	50.5	40.5	33.5

Exhibits of a similar import were filed by the Seaboard and the Coast Line. It is not necessary to go into a further or detailed analysis of the exhibits filed by either side. It should be observed, however, that the comparisons by the defendants are not supported by evidence of substantial similarity of transportation conditions, except in a general way. On the whole, we do not think the intrastate rates submitted by either side are proper standards of comparison for the purposes intended. Moreover, no discrimination against the Virginia cities is alleged or appears as between the interstate rates on the one hand and the North Carolina intrastate rates

on the other, and on the record before us it would be just as reasonable to presume that the latter rates are too low as to hold that the former are too high.

Many matters embodied in the evidence or pointed out in the briefs of counsel are not herein specifically discussed or referred to, but they have all been considered. To discuss them in detail would unduly prolong this report and serve no useful purpose.

Upon consideration of all the facts disclosed of record, and of the contentions of counsel based thereon, we are of opinion and find that the rates from the Virginia cities to the North Carolina territory herein involved have not been shown to be unreasonable in themselves or relatively. We are further of opinion and find that under the present adjustment of rates from the Virginia cities to North Carolina on the one hand, and from Cincinnati and Louisville to North Carolina on the other hand, there is no unjust discrimination against the Virginia cities or undue preference in favor of Cincinnati and Louisville. It follows that the complaint must be dismissed, and it will be so ordered.

40 I. C. C.

**IN THE MATTER OF REOPENING FOURTH SECTION
APPLICATIONS Nos. 205, 342, 343, 344, 349, 350, 352, 10336,
9813, 10110, 10126, 10155, 10186, AND 10189.**

Submitted April 26, 1916. Decided June 5, 1916.

1. Order respecting Fourth Section Applications Nos. 205, 342, 343, 344, 349, 350, and 352 rescinded, effective September 1, 1916, in so far as it affords to the carriers any greater degree of relief from the provisions of the fourth section on schedule C articles than is afforded by Fourth Section Order No. 124 of April 30, 1915, respecting what are designated as schedule B commodities described in *Commodity Rates to Pacific Coast Terminals*, 34 I. C. C., 13.
2. Order respecting Fourth Section Application No. 10336, rescinded, effective September 1, 1916.
3. Orders respecting Fourth Section Applications Nos. 9813, 10110, 10126, 10155, 10186, and 10189, rescinded, effective September 1, 1916.

J. B. Campbell for Spokane Merchants Association.

Frank Lyon for American-Hawaiian Steamship Company and Luckenbach Steamship Company.

H. F. Bartine and *J. F. Shaughnessy* for Railroad Commission of Nevada and Public Utilities Commission of Idaho.

O. T. Helpling for San Pedro, Wilmington, and San Diego, Cal., chambers of commerce.

W. H. Metson, *Charles Clifford*, and *Frank Vansant* for A. Lachman & Company and others.

Fred H. Wood for Southern Pacific Company.

J. N. Teal for Chamber of Commerce of Portland, Oreg.

Seth Mann for San Francisco Chamber of Commerce.

Charles Donnelly for Northern Pacific Railway Company.

E. C. Lindley for Great Northern Railway Company.

A. E. Helm and *Joseph L. Bristow* for Public Utilities Commission of Kansas.

F. W. Maxwell for Denver Transportation Bureau.

R. L. Hearon for Colorado Fuel & Iron Company.

F. T. Bentley for Illinois Manufacturers Association and Illinois Steel Company.

F. P. Gregson for Associate Jobbers of Los Angeles.

T. J. Norton for Atchison, Topeka & Santa Fe Railway Company.

Martin Van Persyn for Wholesale Grocers Exchange of Chicago and Sprague Warner & Company.

Stanley E. Temple for Stockton Traffic Bureau.

G. J. Bradley for Merchants & Manufacturers Association of Sacramento.

F. M. Hill for Fresno Traffic Association.

H. C. Barlow for Chicago Association of Commerce.

W. S. McCarthy and *H. W. Prickett* for Traffic Bureau of Utah.

S. J. Wettrick for Seattle Chamber of Commerce.

Hubert Thompson for Union Carbine Company, New York.

D. H. Stults for American Sugar Refining Company.

Jay W. McCune for Tacoma Commercial Club and Chamber of Commerce.

C. L. Lingo for Inland Steel Company, Illinois Manufacturers Association, and Interstate Iron & Steel Company.

R. E. L. Bunch for American Brake Shoe & Foundry Company.

M. H. Aylesworth for Public Utility Commission of Colorado.

F. A. Jones for Arizona Corporation Commission, State Corporation Commission of New Mexico, Interior Counties Freight Bureau of Southern California, and Grand Junction Chamber of Commerce.

Charles Kimmich for Freight Adjustment Steering Committee of Charleston, S. C.

C. H. Reigart for American Iron & Steel Manufacturing Company.

H. M. Zoon for Lukens Iron & Steel Company.

B. L. Winchell for Union Pacific system.

A. P. Williams, *Thomas S. Valletti*, and *Sigel Seeman* for New York State Wholesale Grocers Association.

Frank A. Aplin for Dried Fruit Association of New York.

James C. Lincoln for Merchants Association of New York.

E. Sutcliffe for Warren Brothers Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

This proceeding is the result of two petitions, one filed on behalf of the Spokane Merchants Association and the other by the Nevada Railroad Commission, asking the Commission to reopen for further consideration Fourth Section Applications Nos. 205, 342, 343, 344, 349, 350, and 352, filed on behalf of the transcontinental carriers, asking for fourth section relief as to commodity rates from eastern defined territory to Pacific coast points. These applications have been dealt with in *Railroad Commission of Nevada v. S. P. Co.*, 21 I. C. C., 329; *City of Spokane v. N. P. Ry. Co.*, 21 I. C. C., 400; and *Commodity Rates to Pacific Coast Terminals*, 32 I. C. C., 611; 34 I. C. C., 13. Through the reports and orders in these cases specific relief has been granted to the carriers, permitting them to con-

tinue lower rates to Pacific coast points than to intermediate points. The petitions filed on behalf of the Spokane Merchants Association and by the Nevada Railroad Commission allege that by reason of slides in the Panama Canal and the increased demand for shipping which has arisen in consequence of the European war, the water competition which has heretofore warranted certain relatively low rail rates from eastern defined territories to the Pacific coast has in large part disappeared. It is further alleged that under the circumstances now existing the maintenance of the present lower rates to the Pacific coast points than to intermediate territory has the effect of producing unjust and undue discrimination against intermediate points.

The Commission, therefore, by appropriate order, reopened the applications respecting westbound rates on commodities comprised within a list known as schedule C, described in *Commodity Rates to Pacific Coast Terminals*, *supra*, and Fourth Section Application No. 10336, respecting rates on iron and steel articles from Pittsburgh and related points to Pacific coast terminals. The Commission also on its own motion reopened Fourth Section Applications Nos. 9813, 10110, 10126, 10155, 10186, and 10189, respecting rates on barley, beans, canned goods, asphaltum, dried fruits, and wine from California ports via rail-and-water routes through Gulf ports to the Atlantic seaboard. By our orders responsive to these applications rates have been authorized from California ports on these commodities to the Atlantic seaboard lower than those contemporaneously applied from intermediate California points. Hearing was ordered at Washington on April 24, 1916, before the Commission, with reference to such changed conditions as were alleged to make necessary or appropriate any change in the orders heretofore entered with respect to these applications.

It was shown at the hearing that the obstructions to canal traffic caused by the slides which from September, 1915, to April, 1916, had closed the Panama Canal, had in large part been removed, and that the canal was reopened on or about April 15, 1916. The two principal steamship companies that formerly operated between the Atlantic and Pacific coasts via the canal, the American-Hawaiian Steamship Company and the Luckenbach Steamship Company, through their principal traffic officers, announced that owing in part to the obstructions to passage through the canal which had rendered it impossible to use that route from September, 1915, to April, 1916, and in part to the unprecedentedly high rates which are now being offered for the transportation of many kinds of ocean freight, they had for the time being withdrawn all their ships from the coast to coast business and chartered many of them for other purposes for

periods extending into the future from 3 to 18 months. The prices obtained for the use of these ships, whether by the month or by the voyage, were exceptionally high. So long as such rates can be obtained for ocean service between the United States and foreign countries there is no doubt that the coast to coast business will be unattractive to steamship lines at the rates now obtainable. Both of these companies announced their intention ultimately to return to this service but stated that such return was unlikely before the end of the year 1916 and that the time of such return depended in part upon the measure of the rates they would be able to secure for this service in competition with the rail lines. The result of all the evidence offered was to show that there is not at this time any effective water competition between the two coasts and that there is little likelihood of any material competition by water during the present calendar year, irrespective of the action the Commission may take with respect to these petitions.

The rail carriers take the position that although the water competition has for the time being disappeared, the condition is but temporary, and the rates applied by the steamship lines during the first six months after the canal was opened are representative of the normal rates with which the rail lines must expect to compete if they hope to continue to haul any considerable percentage of the business to and from the Pacific coast points. It was shown that the rates applied by the steamship lines on the schedule C commodities during the six months following the opening of the canal corresponded closely to the divisions of through rates on the same articles enjoyed by the American-Hawaiian Steamship Company during the years preceding the opening of the canal when that company was operating via the Isthmus of Tehuantepec. It appears that during these years of operation via the Isthmus the company was prosperous, built up its fleet, enlarged its business, and that this prosperity was founded upon the handling of business between the two coasts at rates which netted the company approximately the same revenue which it subsequently received for the through carriage of this traffic via the Panama Canal. It would seem that the rates at which traffic was taken by sea during the last half of the year 1914 were not materially lower than might reasonably have been expected at that time, and that such rates may perhaps again obtain when the normal conditions of ocean traffic shall have been restored. The rail rates, therefore, on these schedule C commodities and the water-and-rail rates via Galveston on the California products named when established were not lower than the conditions then existing warranted, if the rail lines were to continue to compete for this traffic with the ships. It is perfectly clear, however, that the conditions formerly existing

have materially changed. The unprecedented freight rates which are being paid for ocean transportation between this and foreign countries have attracted to that service practically all of the ships, regular or irregular, which have been heretofore engaged in the coast to coast service. That the conditions with which we are confronted are but temporary is admitted. How long such conditions will last is problematical. As the situation now stands, however, the rail rates on all these schedule C commodities from eastern defined territories to Pacific coast terminals are lower than the present conditions warrant, while at the same time higher rates are applied at intermediate points. The eastbound rates on California products from California ports to the Atlantic seaboard are also lower than present conditions warrant and lower than the rates applied from and to intermediate points. The rate adjustment in question was established after exhaustive hearing and careful study as to each of the commodities involved, and was justified by the conditions then existing. The war and an unparalleled rise in prices for ocean transportation have so changed the situation as to transform a relation of rates which was justified when established to one that is now unjustly discriminatory against intermediate points.

The representatives of the intermediate points urge that the conditions now existing, although unusual and probably temporary, will undoubtedly exist for a number of months to come, and that during this period the maintenance of these relatively low rates to coast points and higher rates to intermediate points constitutes undue preference in favor of the coast points and undue prejudice to intermediate points. The representatives of the coast cities, both on the Atlantic and the Pacific coasts, and the representatives of many other shippers, urge that the present adjustment is the result of much labor and thought and that many contracts have been made predicated upon expectation of a continuation of the present rail rates, and that an increase of the present rates to the coast on these commodities will result in much hardship and loss to individual shippers, business firms, and communities. They urge also that the present state of affairs is but temporary and that by the time a readjustment of these rates can be effected a change in conditions may have come about which will render a return to the present rates necessary.

No change in rates such as is here sought should be made precipitately. Yet necessary and proper changes in rates must be effected from time to time, although such changes may result in hardship and loss. The coast cities also contend that as some of the rates to Pacific coast points and the rates on California products from the California ports to the Atlantic seaboard have been reduced since June 18, 1910, on account of water competition, they can not be again

increased under the present circumstances because such increases are prohibited by that portion of the fourth section of the act as amended which reads as follows:

Whenever a carrier by railroad shall in competition with a water route or routes reduce the rates on the carriage of any species of freight to or from competitive points, it shall not be permitted to increase such rates unless after hearing by the Interstate Commerce Commission it shall be found that such proposed increase rests upon changed conditions other than the elimination of water competition.

This section of the act must, of course, be construed in the light of the other sections, and in view also of the purpose and intent of this particular section. One of the primary purposes of the act to regulate commerce was to preserve and promote and not to destroy competition between carriers. The purpose of this clause was the preservation of water competition. It was intended to act as a restraint against rail carriers reducing their rates between competitive points to such a level as to render the water service between such points unremunerative and unattractive. Should a rail carrier operating a route between competitive points in competition with a water route depress its rates, without authority of the Commission, to a level so low as to drive the water carrier from the field, the rail carrier is prohibited from thereafter increasing its rates except by permission of this Commission, and such permission can not be extended unless reasons for the proposed increases are shown other than the elimination of the water competition. In the situation here considered, however, the carriers sought authority from this Commission to make the reductions which have been made. Hearings were held and careful examination was made of each proposed rate, both to the coast points and to and from intermediate points. The Commission had to determine the following facts:

(1) Were the proposed rates to the coast points warranted by the competition there existing?

(2) Were the lower terminal rates proposed such as to more than cover the out of pocket costs of the rail carriers that performed the service?

(3) Were the higher rates proposed to intermediate points and in the case of the eastbound rates from intermediate points, reasonable *per se* and not unjustly discriminatory against such points?

The first two questions being answered in the affirmative by the testimony offered, the Commission itself fixed the relative measure of the rates to intermediate points in the case of the westbound rates and authorized the relative measure of the rates from intermediate points proposed by the carriers in the case of the eastbound rates under the conviction that the rates to and from intermediate points so proposed did not unjustly discriminate against such points.

The carriers have proceeded in this case under the authority of the Commission to make only such rates to the coast points as would enable them to compete for and share in this traffic, and the withdrawal of boats from this service has not been on account of the rates made by the rail carriers with which the boats compete, but on account of slides in the Panama Canal and the extraordinary rise in ocean freights. The temporary withdrawal of the canal service in this instance is clearly not the result of any act of the carriers or of this Commission.

If, however, in the exercise of our judgment upon the facts presented in this case we had permitted the rail carriers to establish lower rates to the coast points than the actual competition there existing warranted, and upon hearing with proper notice to all interested parties it was subsequently shown that the effect of our order was to permit the continuance of rates to such points lower than were warranted by competition there existing, shall it be said that this condition must be perpetuated? To continue rates to the coast points that are lower than are necessitated by the actual water competition and higher rates to intermediate points and to other points over similar distances under like circumstances, is to perpetuate a discrimination that is unjust. The second and third sections of the act forbid all unduly preferential or unjustly discriminatory rates and practices. The portion of the fourth section above quoted does not repeal or annul any part of the second and third sections of the act to regulate commerce. If a coast point is receiving a lower rate than that to which it is lawfully entitled by the conditions there existing it is a preference at that point that results in prejudice against higher rated points whether intermediate thereto or not. Furthermore, the primary purpose of this portion of the fourth section being to preserve and promote competition by the water carriers, it must be so construed as to give effect to that purpose. If the rail rates between the two coasts, established in the light of conditions then existing, should, through such a complete change of conditions as that which has so recently come about, be now at a level so low as to make the service between the two coasts unattractive to the boat lines, should they be readjusted to a basis that will attract the water carriers back to the service and the point may be held at that extent be (

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found, in connection with which rates relief may be afforded according to the degree and extent of the competition. It is admitted that the present rates upon schedule C articles from eastern defined territories to Pacific coast points, and the rates on barley, beans, canned goods, asphaltum, dried fruits, and wine from California ports to the Atlantic seaboard are lower than the present competition by water justifies or makes necessary. The maintenance of these low rates to the coast points and higher rates to or from intermediate points has the effect under present circumstances of unduly preferring the coast points and unjustly discriminating against intermediate points. This condition has existed for several months. The recent withdrawal of the principal steamship lines, however, and their contracts for use in other lines of service creates a probability that there will be but little effective water service during the current year and perhaps for a considerable period thereafter. We shall, therefore, rescind, effective September 1, 1916, those portions of our orders relating to the schedule C commodities and require that the rates on these commodities from eastern defined territories to Pacific coast terminals be adjusted effective on that date in accordance with the terms of our order respecting the schedule B commodities. The order responding to application No. 10336 respecting rates on iron and steel articles from Pittsburgh and related points will likewise be rescinded, effective September 1, 1916. We shall rescind, effective September 1, 1916, our orders responding to applications Nos. 9813, 10110, 10126, 10155, 10186, and 10189 respecting rates on California products from California ports via Gulf routes to the Atlantic seaboard. The rates on these articles eastbound must be readjusted in strict accord with the requirements of the fourth section, except in so far as any of them were by order permitted to deviate from the requirements of the fourth section of the act prior to the establishment of the present effective terminal rates eastbound. If conditions should again materially change so as to justify such action, petitions for further orders may be presented and they will be dealt with as the circumstances then appearing may warrant.

No. 8313.
JEFFERSON LUMBER COMPANY
v.
MOBILE & OHIO RAILROAD COMPANY ET AL.

Submitted November 22, 1915. Decided May 24, 1916.

Reparation awarded on account of unlawful charges collected for the transportation of two carloads of lumber from Carloss Spur, Ala., to Chicago, Ill., and Indianapolis, Ind.

J. J. Jackson for complainant.

Edward H. Hart for Mobile & Ohio Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is A. J. Gray, engaged in the lumber business at Birmingham, Ala., under the trade name of the Jefferson Lumber Company. By complaint, filed September 1, 1915, it is alleged that the charges collected by the defendants for the transportation in May and June, 1914, of two carloads of lumber from Carloss Spur, Ala., to Chicago, Ill., and Indianapolis, Ind., respectively, dressed en route at Northport, Ala., were unjust and unreasonable. Reparation is asked.

Carloss Spur and Northport are local stations on the Mobile & Ohio Railroad. The shipments were billed with instructions by complainant to "stop at Alabama Slat & Lumber Co., Northport, Ala., for dressing," which were obeyed. Defendants' tariff did not provide for dressing in transit at Northport. Total charges were collected on the shipments in the sum of \$303.92: \$71.60 on 143,200 pounds of rough lumber from Carloss Spur to Northport; \$232.32 on 105,600 pounds of dressed lumber from Northport to Chicago and Indianapolis; based on a rate of 5 cents per 100 pounds from Carloss Spur to Northport and a rate of 22 cents beyond on each shipment. The 22-cent rate from Northport to Chicago and Indianapolis was properly applied. The legal rate from Carloss Spur to Northport, however, was 4 cents, and the shipments were overcharged \$14.32.

Complainant contends that the charges collected were unreasonable in that they exceeded the charges that would have accrued at the through rate from point of origin to destination because a provision for dressing in transit was published by the Mobile & Ohio

Railroad to take effect October 1, 1914. This provision was never available for the reason that no planer at Northport has entered into an agreement with the Mobile & Ohio Railroad relative to the policing of shipments at that point, which was made a condition precedent to the application of the arrangement. When the shipments moved defendants' tariffs provided that lumber originating at Carloss Spur might be dressed in transit at Tuscaloosa, Ala., a point on the Mobile & Ohio Railroad 2 miles nearer than Northport to Carloss Spur. If the shipper had directed dressing in transit at Tuscaloosa instead of at Northport, the extra charges attacked would not have accrued. There is no proof that either component of the through rate applicable was, or is, unreasonable; nor any explanation of complainant's failure to avail himself of the transit service accorded at Tuscaloosa. There is also no showing that the absence of transit service at Northport was unreasonable or unduly prejudicial.

Complainant contends further that it was incumbent upon the agent at Carloss Spur to advise him that there was no transit service at Northport, and that the execution of bills of lading with instructions to stop for dressing at Northport was a violation of conference rules Nos. 286 (f) and 370, which provide as follows:

286 (f). The obligation lawfully rests upon the carrier's agent to refrain from executing a bill of lading which contains provisions that can not lawfully be complied with, or provisions which are contradictory, and therefore impossible of execution. When, therefore, the rate and the route are both given by the shipper in the shipping instructions and the rate given does not apply via the route designated, it is the duty of the carrier's agent to ascertain from the shipper whether the rate or the route given in the shipping instructions shall be followed. The carrier will be held responsible for any damages which may result from the failure of its agent to follow this course.

370. Besides stating the route and giving instructions to stop the car in transit to finish loading a shipper also noted a through rate on the bill of lading. This rate did not apply over the indicated route, but was applicable over a route that did not permit the stop specified. *Held*, That the initial carrier, not having advised the shipper of the facts, is liable under *Conference Ruling 286-f* for the higher charges that resulted from following the routing instructions.

These rules did not apply for the reason that the bills of lading were not impossible of execution, nor contradictory, and no rate was inserted therein. Defendant explicitly followed the definite directions in the bill of lading. Complainant also refers to conference rules Nos. 38 and 220(c), but these rules refer to authority from the Commission to make reparation on informal complaints and therefore are entirely inapplicable.

We find that the charges legally applicable to the shipments were not unreasonable or unjustly discriminatory, but we do find that they were excessive to the extent that the charges collected for the movement from Carloss Spur to Northport exceeded \$57.28, based on the legal rate of 4 cents per 100 pounds. We further find that

complainant made the shipments in accordance with the foregoing statement of facts and paid charges thereon herein found to have been excessive; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued had the rate legally applicable been applied; and that it is entitled to an award of reparation in the sum of \$14.32, with interest from July 6, 1915. An appropriate order will be entered.

No. 7309.

PROVIDENCE FRUIT & PRODUCE EXCHANGE ET AL.
v.
MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE
RAILWAY COMPANY ET AL.

Submitted January 12, 1916. Decided May 29, 1916.

Carload rate on butter from Minneapolis, Minn., to Providence, R. I., not found unreasonable or unjustly discriminatory. Complaint dismissed.

G. W. Collier for complainants.

John M. Sternhagen for official classification lines.

R. Van Ummersen for Boston & Albany Railroad Company.

O. W. Dynes for Chicago, Milwaukee & St. Paul Railway Company.

C. C. Wright for Chicago & North Western Railway Company.

W. F. Dickinson for Chicago, Rock Island & Pacific Railway Company.

A. P. Humburg for Illinois Central Railroad Company.

Jas. P. Sheean for Chicago, St. Paul, Minneapolis & Omaha Railway Company.

R. B. Scott for Chicago, Burlington & Quincy Railroad Company.

W. H. Bremner for Minneapolis & St. Louis Railroad Company.

Albert H. Lossow for all western lines.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are the Providence Fruit & Produce Exchange, a voluntary organization composed of certain dealers in fruits and produce at Providence, R. I., and C. F. Cooper and Ellsworth Sisson, copartners, engaged in business at Providence, under the firm name of Cooper & Sisson, and members of the exchange. By com-
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plaint, filed September 18, 1914, they allege that defendants' carload rate for the transportation of butter from Minneapolis, Minn., to Providence is unreasonable and that the components of the through rate, applicable to and from Chicago, Ill., are unreasonable and unjustly discriminatory. Reparation is asked on seven shipments made in August, September, and November, 1912. All but two of the shipments were delivered prior to September 18, 1912, and the informal presentation of the claims based on them was insufficient to toll the statute of limitation.

The shipments were routed by the consignor by way of the Minneapolis, St. Paul & Sault Ste. Marie Railway, hereinafter called the Soo line, to Sault Ste. Marie, Mich.; the Canadian Pacific Railway to Newport, Vt.; the Boston & Maine Railroad to Worcester, Mass.; and the New York, New Haven & Hartford Railroad to destination. No joint rate applied or applies on butter in carloads from Minneapolis to Providence. The through rate by way of Sault Ste. Marie was and is the same as the rate by way of Chicago, viz, the western classification third-class carload rate of 40 cents per 100 pounds, minimum weight 20,000 pounds, to the gateway, plus the official classification second-class any-quantity rate of 71 cents beyond. Complaint is made of the amount of the rate west of Chicago and the classification rating applicable east of Chicago. A joint carload rate of 91 cents per 100 pounds applied over the route of movement on butter and eggs brought into Minneapolis from points on the Soo line. Complainants thought this rate should have applied to the shipments involved, but erroneously, as the 91-cent rate was a concentration rate and could not be applied to shipments from Minneapolis proper. The attack upon the rates through the Chicago gateway is not based on any objection to the movement of the shipments by the route traversed.

Carload rates on butter, eggs, and poultry from Omaha, Nebr., to various points east of the Mississippi River, including Boston, Mass., were considered in *Commercial Club of Omaha v. B. & O. R. R. Co.*, 19 I. C. C., 397. The rate considered on butter was the western classification third-class carload rate west of Chicago, and the official classification second-class any-quantity rate east of Chicago. The principal object of the complaint was to secure carload rates on butter, eggs, and poultry from Omaha to points in official classification territory. We refused to disturb the any-quantity basis then in effect in the territory east of the Mississippi River and Chicago, and dismissed the complaint, saying in part:

The complainant does not undertake to establish the unreasonableness of any specific rate covered by the petition, nor are the factors comprising the through rates subjected to individual attack; the propriety of the entire existing rate structure is called in question.

Providence is a Boston rate point, but complainants attempt to distinguish the issues presented in that case and in this one, and in addition offer evidence against the separate rate factors west and east of Chicago. They state that we dealt in the former case only with the mixed carload rate on "butter, eggs, and poultry," whereas this complaint relates to the "straight carload rate on butter." Nothing in our report in the *Omaha Case* warrants the assumption that the carload rate involved applied only to mixtures of butter, eggs, and poultry. Reference also is made to the lower carload rate on certain perishable fruits and vegetables. The same comparison was made in the *Omaha Case*, and we adhere to the opinion there expressed that these commodities are not properly comparable with the traffic under consideration. Particular attention is called to the fifth-class carload rating of lard, but butter and lard also are not properly comparable from a classification standpoint. The lowest grades of butter may compete with the best grades of lard for baking purposes, but the lower grades of lard are in direct competition with various greases, oils, and lubricants rated fifth class in carloads in the official classification. Butter is produced largely at creameries scattered through the country, while the greater portion of the lard which moves in commerce is produced at centers where hogs are slaughtered in considerable numbers. There is, therefore, no such demand for a carload rating on butter as on lard.

Complainants' evidence against the rates west of Chicago consists principally of comparisons of the class rates westbound with the class rates eastbound, although the 40-cent rate west of Chicago is also compared with the divisions accruing to the western carriers on traffic rated third class under existing rates from Providence to Minneapolis. It is unnecessary to discuss either the general structure of the class rates between eastern points and middle western territory or the competitive influences which have brought about the lower rates westbound or the divisions which have been accepted by the western carriers out of the rates on westbound traffic. All of these things are fully discussed in *Burnham, Hanna, Munger Co. v. C., R. I. & P. Ry. Co.*, 14 I. C. C., 299, and other reports of the Commission.

Complainants adduce no evidence relative to the transportation conditions involved and their claims are not supported by the evidence offered. The Chicago & North Western Railway has the short line from Minneapolis to Chicago, 408 miles. The 40-cent rate yields 19.6 mills per ton-mile. Complainant shows that this is in excess of the average revenue per ton-mile of a number of eastern roads, but little significance attaches to the comparisons. The average revenue per ton-mile of the western roads is generally in excess of the average revenue per ton-mile of the roads in the east. Butter,

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moreover, is a highly perishable commodity which requires expedited service and must be handled in refrigerator cars. The 40-cent rate to Chicago is substantially the same as defendants' rates on the same commodity for corresponding distances from Chicago to various points in Ohio and Illinois.

Only the rate from Minneapolis to Providence is involved, but the same adjustment extends over a wide area. Counsel for the nominal complainants represents in his brief that "the real complainant in this case is Cooper & Sisson." The testimony of the representative of this firm shows, however, that its chief interest in this proceeding is to secure reparation to which it considers itself entitled because of the alleged representation of defendants' agent at Providence that the 91-cent rate referred to was applicable to the shipments over the northern route and its reliance upon that rate in making its sales contracts.

The shipments averaged 22,533 pounds and moved a distance of 1,492 miles. The car-mile earnings averaged 16 cents. The average value of creamery butter at the Elgin market for the years 1901 to 1912, inclusive, is stated to have been about 25 cents per pound, so that the average value of each of the shipments was more than \$5,000.

We find that the rates assailed are not shown to be unreasonable or unjustly discriminatory. The complaint does not ask for joint rates, but complainants' counsel prefers such a request. In view of our finding no useful purpose would be served by requiring the publication of the present rates as a joint rate.

The report rendered in the *Omaha Case*, *supra*, shows that the any-quantity rates of the carriers in official classification territory which were considered included the expense of icing. A charge is now made for the ice furnished, under tariff provisions effective March 20, 1915, which defendants have the burden of justifying. Complainant does not refer specifically to the matter of icing and little is said about it in the record. The additional expense which the charge causes depends upon the amount of ice used, and no testimony has been offered showing what the expense would amount to on an average shipment. We are constrained, therefore, not to pursue the question further upon this record.

An order will be entered dismissing the complaint.

INVESTIGATION AND SUSPENSION DOCKET No. 699.
GRAIN TO ARKANSAS POINTS.

Submitted February 3, 1916. Decided May 19, 1916.

Proposed cancellation of joint rates on grain in carloads from points in Kansas and Missouri on the St. Louis & San Francisco Railroad by way of Bridge Junction, Ark., to points in Arkansas on the Chicago, Rock Island & Pacific Railway justified in part. Schedules under suspension ordered canceled but without prejudice to respondents' right to file a new tariff conforming to the findings herein.

W. F. Dickinson, Wallace T. Hughes, and J. L. Goree for respondents.

Carl Giessow for St. Louis & San Francisco Railroad Company and its receivers.

W. H. Marshall and S. C. Bates for protestants.

M. W. Nesbit for Mammoth Spring Milling Company, protestant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The schedule involved in this proceeding proposed to cancel the joint rates in effect by way of Bridge Junction, Ark., on grain in carloads from certain points in Kansas and Missouri on the St. Louis & San Francisco Railroad, hereinafter referred to as the Frisco, to destinations in Arkansas on the Chicago, Rock Island & Pacific Railway, hereinafter called the Rock Island. It was filed by the Frisco and James W. Lusk, W. C. Nixon, and W. B. Biddle, receivers thereof, to take effect August 26, 1915, but upon protests filed by the Jobbers & Manufacturers Association of Springfield, Mo., Mammoth Spring Milling Company of Mammoth Spring, Ark., and the Southwestern Missouri Millers' Club of Kansas City, Mo., was suspended until December 24, 1915, and later until June 24, 1916.

The Frisco connects with the Rock Island at Bridge Junction and also at Mansfield, Ark., and Wister, Okla. In the past respondents have maintained joint rates on grain and grain products in carloads originating at Kansas points on the Frisco east of Wichita and Arkansas City, Kans., and at Missouri points on the Frisco west, north, and south of Springfield, except points south of Monett, Mo., to all stations on the Rock Island in Arkansas. These rates have applied either by way of Wister or Bridge Junction, although the grain has had to be milled in transit at Springfield, Bridge Junction, or some intermediate point for routing

through Bridge Junction to be available. The schedule under suspension proposed to cancel the application of the joint rates maintained over the route through Bridge Junction, on shipments from the originating territory destined to Rock Island stations in Arkansas west and south of Little Rock, Ark., including Little Rock, restricting their application to the route through Wister. Little Rock is located between Wister and Bridge Junction, 39 miles farther from Wister than from Bridge Junction. No change is proposed in the application through Bridge Junction of the joint rates maintained for shipments from the territory of origin to points between Bridge Junction and Little Rock, or for shipments from territory east and northeast of Springfield, except that the joint rates from Frisco stations Lebanon to Eastern Junction, Mo., between Springfield and St. Louis, Mo., are to apply only by way of Wister, Okla., or Mansfield, Ark. All restrictions relative to milling in transit on shipments entitled to routing through Bridge Junction would be removed. Such shipments could be milled in transit at any point through which they passed.

The protests were filed chiefly on behalf of millers located at Springfield and various other points on the Frisco between Springfield and Bridge Junction, who obtain the greater portion of their wheat west and northwest of Springfield, grind most of it in transit at such points as Springfield, West Plains, and Mountain Grove, Mo., and Mammoth Spring, Ark., and forward a large proportion of the product to points in Arkansas on the Rock Island between Bridge Junction and Little Rock and points south of Little Rock. The protests are directed against those items of the schedule under suspension which proposed to cancel the application of the present joint rates through Bridge Junction on shipments from the originating territory to Little Rock and points south of Little Rock in Arkansas. The propriety of canceling the application of the present joint rates by way of Bridge Junction for shipments to destinations between Little Rock and Wister is not questioned. If the suspended schedule should be allowed to take effect the protesting millers would be compelled to pay to the destination points involved the combinations of the intermediate rates in effect by way of Bridge Junction, except that millers near enough to Springfield might avail themselves of the route through Wister by paying certain additional charges for the out of line haul. The back-haul charge in the case of Springfield is 3 cents per 100 pounds for grain originating west of Monett and in the case of points farther east than Springfield is even higher.

Protestants assert that the increased charges which would result from the schedule proposed would amount to more than 5 cents per barrel of flour, which is said to be a fair average profit, and would force protestants to relinquish to their competitors business which

they have enjoyed for many years. They also assert that the route through Bridge Junction is not an unnatural or circuitous route. Respondent Rock Island, which assumed the burden of justifying the proposed cancellations, asserts that with respect to the territories of origin and destination the Bridge Junction route was originally established by mistake; that it is appreciably longer than the Wister route; that it is circuitous and unnatural; and that Wister is the natural gateway for this traffic. The Rock Island would receive a longer haul on traffic through Wister than on traffic through Bridge Junction and would receive a greater division of the joint rates than it now receives.

A somewhat similar issue was presented in *Missouri Millers' Club v. St. L. & S. F. R. R. Co.*, 26 I. C. C., 630. The destinations in that case were confined to points between Bridge Junction and Little Rock, not including Little Rock, to which point complainants had access by another route. No order was issued, but suggestions were made which the parties agreed to treat as an order, to the effect that the Bridge Junction route should be continued except as to the territory south of Monett.

The only issue presented in this proceeding is whether the through route and joint rates by way of Bridge Junction should remain in effect to Little Rock and stations south thereof. Springfield may be taken as an illustrative point of origin with respect to all traffic originating upon the lines of the Frisco between Kansas City and Springfield via Fort Scott, Kans., and via Clinton, Mo.; between Springfield and St. Louis and on the branch line extending south of Springfield to Chadwick, Mo. Little Rock is 384 miles from Springfield by way of Wister; 410 miles by way of Bridge Junction, a difference of 26 miles. Shipments to points on the Rock Island south of Little Rock would pass through Little Rock, so that the same difference in distance in favor of the Wister route would obtain to those points also. The evidence fails to disclose that operating conditions are any more favorable by one route than by the other, and neither the difference in distance in favor of the Wister route nor the fact that the Rock Island would receive a greater division of the rates on shipments moved through Wister suffices to justify the proposed closing of the route through Bridge Junction from the territory now under consideration, especially as respondents have maintained these joint rates applicable through Bridge Junction for some years and propose to continue them on traffic originating at Kansas City. We, therefore, find that respondents have not justified the cancellation of the joint rates by way of Bridge Junction on grain from the territory above described as that of which Springfield is typical, when destined to Little Rock and points south thereof.

Monett, Mo., may be taken as a typical point of origin for traffic from the territory served by the Frisco west and northwest of Monett and Aurora, Mo., to Arkansas City and Ellsworth, Kans., and also to but not including the line of the Frisco extending from Springfield to Kansas City by way of South Greenfield, Mo., and Fort Scott, Kans. Little Rock is 340 miles from Monett by way of Wister; 453 miles by way of Bridge Junction, a difference of 113 miles. From points in this territory of which Monett is taken as typical the same difference in distance occurs in moving through Monett. For instance, in the distances to Little Rock from Girard, Kans., there is a difference of 113 miles by way of the respective routes. The same differences in distances obtain from Monett to all points south of Little Rock. In *The Ogden Gateway Case*, 35 I. C. C., 131, we said, at pages 140-141:

The long continuance of a through route and of joint rates on traffic moving over it is often a fact of substantial importance and one that must always be considered, together with all pertinent facts of record, in order to enable us to arrive at sound conclusions in such a case; it has never been held, however, to be a controlling factor in any case. Our authority in such matters is statutory and can not be enlarged by the previous course of the carriers. We think it clear that we have no power under section 15, nor should we assume the power, to prevent the cancellation of through routes and joint rates voluntarily established by the carriers, when, as in this case, the circumstances and conditions are such as would not warrant an order to compel such arrangements if not already in effect.

On page 141, we also stated:

The fact that such an adjustment is now in effect and has voluntarily been maintained for many years gives the protestant and the communities served by it no vested right to a continuance of the adjustment for all time to come.

We held in that case that the differences between the two routes in distance, point of time, and physical characteristics were too substantial to be disregarded. So in this case it is our opinion that the difference in distance in favor of the Wister route from that territory, of which Monett is illustrative, to Little Rock and points south thereof is too substantial to be disregarded.

We find that respondents have justified the cancellation of the joint rates by way of Bridge Junction on grain from the territory of origin last specified to Little Rock and points south thereof in Arkansas. We further find that respondents have justified the cancellation of the joint rates by way of Bridge Junction on grain from all the originating territory involved in this proceeding when destined to points on the Rock Island west of Little Rock. An order will be entered requiring the cancellation of the suspended schedule but without prejudice to respondents' right to file a new tariff in accordance with the views herein expressed. Such tariff may be filed upon one day's notice.

No. 7700.
WESTERN GROCER COMPANY ET AL.
v.
BALTIMORE & OHIO RAILROAD COMPANY ET AL.

Submitted September 28, 1915. Decided June 13, 1916.

Class rates applied on certain carload shipments of peanuts from Virginia points to Marshalltown, Des Moines, and Waterloo, Iowa, found to have been reasonable. Complaint dismissed.

Dwight N. Lewis, J. H. Henderson, F. L. King, S. Jaynes, and F. H. Draper for complainants.

E. G. Wylie for Greater Des Moines Committee.

F. S. Hollands for Chicago Great Western Railway Company.

J. L. Davis and *C. A. Lahey* for Chicago, Milwaukee & St. Paul Railway Company.

A. F. Cleveland for Chicago & North Western Railway Company.

K. F. Burgess and *C. E. Spens* for Chicago, Burlington & Quincy Railroad Company.

R. G. Brown and *W. F. Hughes* for Chicago, Rock Island & Pacific Railway Company.

F. B. Townsend for Minneapolis & St. Louis Railroad Company, Norfolk & Western Railway Company, Southern Railway Company, Virginian Railway Company, and Chesapeake & Ohio Railway Company.

REPORT OF THE COMMISSION.

HALL, Commissioner:

Complainants, Western Grocer Company, Chaney-Royer Company, and Smith, Lichty & Hillman Company, are mercantile corporations having their respective places of business at Marshalltown, Des Moines, and Waterloo, Iowa. By complaint filed January 27, 1915, they allege that, effective August 1, 1913, defendants canceled all proportional commodity rates on peanuts from Mississippi River to Iowa points, thus causing class rates to apply; that this resulted in an unreasonable increase in the rates on peanuts in carloads and subjected complainants to undue prejudice. Reparation is asked and the establishment of just, reasonable, and nondiscriminatory proportional rates on carload shipments of peanuts from the Mississippi River, when from Virginia common points and Franklin, Va., to Marshalltown, Des Moines, and Waterloo. The

establishment of reasonable rates is prayed, but there is no allegation that those in effect since April 1, 1914, were or are unreasonable or otherwise unlawful.

The history of the rates on peanuts in carloads to the destinations mentioned in the complaint is given in the following table. The proportional rates to and from the Mississippi River and the resulting through charges from Virginia common points are shown in cents per 100 pounds.

	To Marshall-town.	To Des Moines.	To Waterloo.
Jan. 18, 1909:			
To the river.....	39.0	39.0	39.0
From the river.....	15.5	17.0	14.5
Through.....	54.5	56.0	53.5
Aug. 1, 1913:			
To the river.....	39.0	39.0	39.0
From the river.....	19.0	19.0	18.0
Through.....	58.0	58.0	57.0
Apr. 1, 1914:			
To the river.....	39.0	39.0	39.0
From the river.....	16.3	16.6	12.8
Through.....	55.3	55.6	51.8
May 1, 1915, and since:			
To the river.....	41.0	41.0	41.0
From the river.....	16.3	16.6	12.8
Through.....	57.3	57.6	53.8

The proportional rates from the Mississippi River to the points named in Iowa under the tariff effective January 18, 1909, were commodity rates; those effective August 1, 1913, and since, were and are the rates applicable to fourth class. The application of class rates to the traffic here in question is not alleged to be unreasonable, and no reparation is claimed on shipments moving subsequent to April 1, 1914. It is apparent, therefore, that the complaint simply challenges the reasonableness of the proportional class rates in effect between August 1, 1913, and April 1, 1914.

The cancellation of the commodity rates effective August 1, 1913, was explained at the hearing as follows: Effective June 30, 1913, the rating on peanuts in the western classification was reduced from third class to fourth class. Prior to that date the third-class basis had generally applied throughout western trunk line territory. When the reduction was made from third to fourth class the carriers felt that the commodity rates, published to certain points to bring about rates lower than third class, should be canceled. This resulted in increases to a few points which had enjoyed commodity rates lower than fourth class.

The rates applied by the defendants in connection with the fourth-class rating were on the same basis as those to all other interior Iowa cities. They were before us in the *Interior Iowa Cities Case*, 28 I. C. C., 64; 29 I. C. C., 536, and as a result of our findings there the rates effective April 1, 1914, were published. In disapproving the rates under review in the *Interior Iowa Cities Case, supra*, we said, at page 75:

Included in all these complaints is a prayer for reparation. We must not be understood, however, in what is said in the foregoing pages, as making any finding with respect to the past transactions between shippers and these defendants or with respect to the reasonableness of these rates in the past, but only as finding that the continuance of these rates for the future will make through charges that are excessive and unreasonable. As in *Warnock Co. v. O. & N. W. Ry. Co.*, 21 I. C. C., 546, reparation will not be allowed in consequence of the findings and order herein.

Upon consideration of the adjustment in effect when complainants' shipments moved we find that the rates applied were reasonable.

There were set for hearing with this case fourth section applications as follows: No. 928, of Virginian Railway; No. 1747, of Chesapeake & Ohio Railway Company; No. 1548, of Southern Railway Company; and No. 1561, of Norfolk & Western Railway Company.

These applications seek authority to continue rates on peanuts from Suffolk, Norfolk, Petersburg, and Franklin, Va., to St. Paul and Minneapolis, Minn., which are lower than the rates contemporaneously applicable on like traffic to Marshalltown, Waterloo, and Des Moines, Iowa, and other intermediate points.

Complainants' case as made can be disposed of without a determination of the questions arising on these applications. Whatever decision we might reach on such questions would have the effect of determining issues much broader than were ever contemplated in this case. Many markets and carriers interested in these issues were not aware that these applications had been set for hearing. For these reasons we shall not at this time pass upon the applications, but leave the questions arising therefrom for determination on a more comprehensive record.

The complaint will be dismissed.

No. 7524.
SWIFT & COMPANY
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted August 30, 1915. Decided June 5, 1916.

Rate charged for the transportation of phosphate rock in carloads from Mount Pleasant, Tenn., to Chicago, Ill., found not unreasonable or unduly prejudicial. Past discrimination not shown to have been injurious and complaint dismissed.

R. D. Rynder for complainant.

Luther M. Walter for Darling & Company, intervener.

H. K. Crafts for Armour Fertilizer Works, intervener.

William Burger for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainant is a corporation engaged in the meat packing and fertilizer business with headquarters at Chicago, Ill. By complaint filed November 30, 1914, it alleges that the rate of \$3.70 per gross ton charged by defendants for the transportation of certain shipments of phosphate rock, in carloads, which moved from Mount Pleasant, Tenn., to Chicago during 1912 and subsequent years, was unreasonable and unjustly discriminatory to the extent that it exceeded the rate of \$3.60 contemporaneously maintained from Mount Pleasant to Hammond, Ind. Reparation is asked and the establishment of a maximum rate for the future which shall not exceed the rate to Hammond. Darling & Company and the Armour Fertilizer Works, manufacturers of fertilizer at Chicago, intervened at the hearing.

Phosphate rock is shipped in two forms, lump and ground. The lump rock, after going through certain processes of manufacture, forms one of the ingredients of the commercial fertilizers produced by complainant and its competitors. The ground rock is not adapted to the manufacture of commercial fertilizer, but can be applied directly to certain kinds of soil without mixture with other materials. It is ground at the points of production, and generally is sold direct to the consumer.

Certain rates, including a rate of \$3.95 per gross ton on phosphate rock from Mount Pleasant to Chicago, were attacked in *Darling &*

Co. v. B. & O. R. R. Co., 15 I. C. C., 79. We found that a reasonable rate for the movement would be \$3.70 per gross ton. This rate was established by the carriers on lump rock to Chicago, March 1, 1909, and has applied ever since. Neither lump rock nor ground rock was specifically mentioned in that case. The commodity was phosphate rock used in the manufacture of fertilizer, and this record shows that the larger manufacturers use only lump rock. The rate on ground rock from Mount Pleasant to Chicago was \$4.59 per gross ton in 1908 and from that time until February 9, 1910, various rates were in effect, none of which was lower than \$3.60. Since February 9, 1910, the rate on ground phosphate rock has been \$3.70, the same as on lump rock.

Hammond is within the Chicago switching limits and ordinarily takes Chicago rates. The Chicago rate on lump rock has been applied on lump rock from Mount Pleasant to Hammond since 1904, except for a period of approximately 11 months from March 31, 1914, to February 21, 1915, when the rate to Hammond was \$3.60. The Chicago rate on ground rock from Mount Pleasant applied to Hammond until May 30, 1909, when the Hammond rate was reduced to \$3.60, where it remained until February 21, 1915, when it was increased to \$3.70, the rate in effect at present.

The Louisville & Nashville contends that there should not be any difference in rates on lump rock and ground rock and states that its rates on the ground rock were established to meet low rates from points of production on the Nashville, Chattanooga & St. Louis Railway. That road did not publish such rates to Hammond and the establishment of the \$3.60 rate to that point, as well as its application to lump rock during the 11-month period named, is attributed to errors in tariff construction.

The principal basis for complainant's attack on the \$3.70 rate to Chicago is the assumption that for approximately six years prior to February 21, 1915, there was a rate of \$3.60 on phosphate rock from Mount Pleasant to Hammond, which, because of its voluntary maintenance by the carriers, might be taken as a measure of the reasonableness of the Chicago rate. The lower rate to Hammond than to Chicago is said to have discriminated against complainant in favor of a fertilizer manufacturer at Hammond in active competition with complainant. The assumption made is disproved by the rate history given, which shows that the rates to Chicago and Hammond on lump phosphate rock have been identical, except for the period of 11 months preceding February 21, 1915. Complainants compared the rates and ton-mile earnings on phosphate rock from Mount Pleasant to Chicago with those from Mount Pleasant and from Agricola, Fla., to various points in Georgia, Alabama, and

Mississippi, but without proof of similarity in circumstances and conditions.

We said in the *Darling Case, supra*, that the ton-mile earnings on phosphate rock should almost always be lower than the average receipts from all sources. Complainant shows that for the year ending June 30, 1914, the average ton-mile earnings of the Louisville & Nashville were 7.78 mills, while those of the Chicago & Eastern Illinois Railroad, which participates with the Louisville & Nashville in transportation to Chicago by way of Evansville, Ind., were 5.12 mills. From these figures it argues that the rate from Mount Pleasant to Chicago should be somewhat less than the \$3.60 rate asked for. We observe that we referred in the *Darling Case, supra*, to the average ton-mile earnings of the Louisville & Nashville for the year ending June 30, 1908, as having been 7.79 mills, while those of the Chicago & Eastern Illinois for the same year were 4.65 mills, or 0.47 mill lower than for the year 1914. Complainant also remarks that the value of phosphate rock was stated in the *Darling Case* to be from \$4 to \$5 per ton, whereas the testimony in this case is that its value is approximately \$3.75 per ton. But no attempt was made by complainant to show any other change in conditions affecting the transportation in question between the date of the decision in the *Darling Case* and the present time.

We find that the rate attacked is not unreasonable. The maintenance of a lower rate to Hammond than to Chicago on lump phosphate rock for the period between March 31, 1914, and February 21, 1915, was unduly prejudicial to complainant, but as the discrimination has now been removed and complainant does not show that it was damaged by the discrimination, the complaint will be dismissed.

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No. 6798.
NASHVILLE LUMBERMEN'S CLUB
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY
ET AL.

Submitted November 15, 1915. Decided June 6, 1916.

Rates and regulations applied to the transportation of hardwood lumber shipped to Nashville, Tenn., and subsequently reshipped to points north of the Potomac and Ohio rivers, not found unreasonable or unduly discriminatory. Complaint dismissed.

John R. Walker for complainants.

R. Walton Moore, W. A. Northcutt, and Charles D. Drayton for defendants.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

In this complaint it is alleged that on hardwood lumber, shipped from mills in the states of Tennessee, Louisiana, Mississippi, Alabama, Florida, and Georgia to Nashville and there taken into the yards of lumber dealers and afterwards shipped out to destinations in official classification territory, the through charges from the original point of shipment to the ultimate destination are unjust, unreasonable, and unduly discriminatory. The petition prays for a transit arrangement under which, when hardwood lumber brought into Nashville on the local rates, has there been assorted, graded, dried, stored, and dressed or manufactured, an equivalent tonnage of lumber, or of lumber products taking the lumber basis of rates, may be reshipped within 12 months at the remainder of the through charges applying through Nashville from the point of original shipment to the ultimate destination. For such a transit service the lumber dealers are willing to pay \$5 a car in addition to the through charges.

No testimony was offered by the complainants tending to show that the through charges complained of are unjust or unreasonable. The substantial issue on the record is the alleged undue discrimination arising out of the fact that a lumber dealer at any of the Ohio River crossings may bring hardwood lumber from mills in the territory described into his lumber yards and there assort, grade, dry, and

dress it and, after storing it for an indefinite period, may finally ship it out to the markets in official classification territory, paying through charges from the mills to the ultimate destination based on the rates to and from the crossing. Nashville is not a rate-breaking point, as are the Ohio River crossings; and lumber originating at stations on the Nashville, Chattanooga & St. Louis Railway or on the Tennessee Central Railroad takes the local rate into Nashville and, when reshipped, the established local charge from Nashville to the ultimate destination is exacted, making through charges from the mills that as a rule exceed the combination of rates on the Ohio River crossings by from 0.1 cent to 5 cents per 100 pounds.

For many years Nashville has been an important hardwood lumber center. But large bodies of hardwood timberlands in the regions reached by the lines serving that city have been cut over, and within a radius of 150 miles there are now no extensive tracts of such timber. Aside from the mills at Nashville, Chattanooga, Decatur, Memphis, and Paducah, there are but four large sawmills on the rails of the Louisville & Nashville, the Nashville, Chattanooga & St. Louis, and the Tennessee Central, the three carriers serving Nashville. Several hundred small mills, however, are scattered through this section and are operating in numerous small tracts of timber. As the ordinary consumer of hardwood lumber uses only particular species, grades, and sizes, it is not possible under present conditions for his requirements to be filled by the smaller mills; their output is therefore shipped to concentrating yards that have been established by lumber dealers at various points and there the lumber is assembled, assorted, graded, and dried, and later shipped out to meet the requirements of the trade. By reason of the fact that the rates break on the Ohio River, such yards may be maintained at the crossings without any attendant increase in the through charges. The hardwood dealer at one of those crossings therefore has a distinct advantage over a dealer at an interior point because the through charges of the latter are increased when the lumber is stopped in his yards and there assorted, assembled, graded, dried, and later shipped out. The lumber dealers at Nashville are therefore asking for a rate adjustment that will put them on a parity with the dealers at the crossings.

This demand on the part of Nashville can not be met upon the record now before us. The practice of breaking rates at ports and on the banks of rivers where a transfer is frequently necessary is not new but has long been in vogue. The advantage of this system and the difficulties of abandoning it were discussed in *Burnham, Hanna, Munger Co. v. C., R. I. & P. Ry. Co.*, 14 I. C. C., 299, 312. The application of the principle to inland points was in *Commercial*

Club of Duluth v. B. & O. R. R. Co., 27 I. C. C., 639, referred to as "unusual," and we there said (p. 657) that to have the rates break at a particular point is not an inherent rate right.

What was said in that case is equally applicable here. The defendants contend, and the record shows, that there is a substantial dissimilarity in the circumstances and conditions surrounding the transportation of lumber through the river crossings as compared with Nashville. The rates based on the Ohio River are made with reference to the competition of different lines and with a view to the equalization of rates through the different gateways, and because of the different circumstances can not be said to result in the undue prejudice of Nashville.

The Louisville & Nashville, since this complaint was filed and in order, as stated at the hearing, to equalize Nashville with Knoxville, has filed a tariff which provides that when the outbound shipment of lumber is made from an assembling yard within 12 months, 25 per cent of the inbound rate may be refunded. In case the sum of the outbound rate and of the inbound rate, thus reduced, makes a total charge lower than the through rate, the latter will apply. The result of this tariff is, so far as that line is concerned, to put Nashville almost on a parity with the Ohio River crossings.

The Nashville, Chattanooga & St. Louis at local points on its line has for many years permitted transit on lumber originating at other local points, the through rate applicable from the point of origin to the final destination being assessed when the lumber moves from the transit point. A charge of 2 cents per 100 pounds, however, is made for the transit service; the tariffs further provide that the movement must be in a continuous direction and involve no back haul; and they fix a carload minimum weight of 30,000 pounds. Such an arrangement at Nashville would, however, not be satisfactory to the complainants and would be but little used by them. The defendants show that from the portion of the territory involved from which lumber would naturally move through Nashville, and as to which that city is the "logical market," the greatest difference between the Nashville combination and the through rate is 2 cents per 100 pounds. If therefore a charge of 2 cents were made at Nashville for the reshipping privilege it would not be used on lumber from this territory, because a shipper, upon payment of the local rate into Nashville, could hold the lumber there as long as he wished and, when finally shipped out, would have paid but 2 cents per 100 pounds in excess of the through rate, or the same amount that he would have been obliged to pay under the transit rule. The same situation would be true, from a more limited territory of origin, if the transit charge were fixed at \$5 a car, as suggested by the complainants.

The Nashville, Chattanooga & St. Louis, in order, as it asserts, to meet the competition of the Southern Railway, permits lumber from a certain restricted territory to be stopped in transit at Chattanooga, and Dalton, in the state of Georgia, and reshipped at the through rates. The record indicates, however, that out of a total of 12,550 tons of lumber moving over that line from Chattanooga during the period from May 1, 1913, to April 30, 1914, the transit rule was used on but 122 tons; from Dalton for the same period, although 8,756 tons of lumber were handled by that carrier, not a pound moved under transit. The fact that such a transit provision has been put in effect at Chattanooga and Dalton to meet the competition of another carrier, and also that the arrangement applies over only one line of road and can be policed without difficulty, differentiates the conditions at Chattanooga and Dalton from those at Nashville.

A reference was also made to the tariffs of the Tennessee Central, which accord transit at Nashville on lumber from Ashland City, on the Cumberland River, and at certain local points on that line, but no testimony concerning the conditions under which transit is permitted at those points was offered by the complainants. This proof falls far short of showing unjust discrimination, as does also the maintenance by the defendants of transit regulations on grain and other products in no way competitive with lumber.

Transit is allowed at Buffalo upon the payment of a charge of \$5 per car. While the lines serving Nashville permit their connections reaching Buffalo to accord this right, the Nashville lines do not participate therein, nor bear any of the expense thereof. The same is true of transit at all points north of the Ohio River. The Nashville lines do, however, participate in through rates which are made up of the aggregate of rates to and from the Ohio River crossings.

From all the facts of record we have reached the conclusion, and so find, that the rates assailed herein have not been shown to be unreasonable or unduly discriminatory. An order dismissing the complaint will therefore be entered.

No. 7203.
AMERICAN WOODS CORPORATION
v.
SOUTHERN RAILWAY COMPANY ET AL.

Submitted January 7, 1916. Decided June 5, 1916.

1. Rate of 23 cents per 100 pounds charged for the transportation of two carloads of lumber from Statesville, N. C., to Jersey City, N. J., found unlawful to the extent that it exceeded 22½ cents. Reparation awarded.
2. A carload shipment of lumber from Elkin, N. C., to New York, N. Y., found to have been misrouted. Reparation awarded.
3. Certain carload shipments of lumber from points in North Carolina to Jersey City and Newark, N. J., New York and Brooklyn, N. Y., and New Haven, Conn., found not misrouted.

Lincoln Bryant for complainant.

R. Walton Moore and *Willis H. Fowle* for Southern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainant is a corporation engaged in the purchase and sale of lumber at Boston, Mass. By complaint, filed August 24, 1914, as amended at the hearing, it alleges that due to misrouting by the Southern Railway Company, the initial carrier, unreasonable charges were collected for the transportation of 19 carloads of lumber from Taylorsville, Bridgewater, Hildebran, Elkin, and Statesville, N. C., to Jersey City and Newark, N. J., New York and Brooklyn, N. Y., and New Haven, Conn., during the period from May to October, 1912. Reparation is asked. The claims were presented to the Commission informally May 15, 1914.

All of the shipments originated on the Southern Railway: 14 at Taylorsville, 1 at Bridgewater, 1 at Hildebran, 1 at Elkin, and 2 at Statesville.

The shipments from Taylorsville and Bridgewater were routed by complainant by way of the Pennsylvania Railroad, but without the specification of any rate or junction point through which they should move in the bill of lading. They were moved by way of Potomac Yard, Va. Rates on lumber from and to the points were lower by way of Pinner's Point, Va., in connection with the New York, Philadelphia & Norfolk Railroad and the lines of the Pennsyl-

vania system, and complainant contends that it was the duty of the Southern Railway to forward the shipments by way of Pinner's Point. But the delivery of the shipments to the Pennsylvania through Potomac Yard complied with the only routing instructions shown on the bills of lading, and the shipments were not misrouted. *Davidson Lumber Co. v. S. Ry. Co.*, Docket No. 4903, unreported.

The shipment from Hildebran moved by way of Pinner's Point and the New York, Philadelphia & Norfolk Railroad and connections to Jersey City, where it was reconsigned to Brooklyn. No routing instructions are in evidence, and as the lower rate in controversy applied by the route of movement the shipment was not misrouted. The freight bills submitted indicate that charges were collected on this shipment at a rate of 23 cents per 100 pounds plus \$5 for reconsignment and \$4 for demurrage or track storage. A rate of 27½ cents per 100 pounds was applicable on lumber in carloads from Hildebran to Bushwick station, Brooklyn, where the shipment was finally delivered. Apparently, therefore, the shipment was undercharged.

The shipments from Statesville were consigned to Jersey City and moved as routed in the bills of lading: "Via Pinner's Point, N. Y. P. & N. and P. R. R. delivery." The shipments aggregated 87,500 pounds, and charges were collected in the sum of \$201.25 at a rate of 23 cents per 100 pounds. A rate of 22½ cents per 100 pounds applied over the route of movement, and the shipments were overcharged \$4.37.

The shipment from Elkin to New York was routed: "Sou. care of Pa. delivery" and moved by way of Potomac Yard. Charges were collected in the sum of \$130.68 on 48,400 pounds at a rate of 27 cents per 100 pounds. A rate of 23 cents per 100 pounds applied by way of Pinner's Point, and Pennsylvania delivery could have been effected by that route. The Southern Railway admits that it misrouted the shipment.

We find that the 23-cent rate charged on the shipments from Statesville to Jersey City was unlawful to the extent that it exceeded 22½ cents; that the shipment from Elkin to New York was misrouted; that these shipments were made as described; that complainant paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded the charges that would have accrued at the rates herein found lawful; and that it is entitled to reparation in the sum of \$23.73, with interest from October 7, 1912, as follows: \$4.37, on account of the overcharge described; \$19.36 on account of the misrouting, for which we find the Southern Railway to have been responsible.

An order will be entered accordingly. But as the New York, Philadelphia & Norfolk Railroad participated in the transportation of the shipments from Statesville to Jersey City it should join in the payment of the overcharge due complainant.

No. 7563.
W. A. CURL
v.
**SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD
COMPANY.**

Submitted December 1, 1915. Decided June 5, 1916.

Refusal of defendant to honor the return portion of a round-trip ticket for transportation from Los Angeles, Cal., to Salt Lake City, Utah, not found unreasonable. Defendant directed to refund an overcharge of \$10 and complaint dismissed.

***W. A. Curl* for complainant in person.
Dana T. Smith for defendant.**

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a resident of Salt Lake City, Utah. By complaint, filed December 11, 1914, he alleges that defendant's refusal to honor the return portion of a round-trip ticket subjected him to unreasonable charges. Reparation is asked.

Complainant purchased a round-trip ticket from Salt Lake City to Los Angeles from defendant at Salt Lake City on December 22, 1913. The price paid was \$40. The ticket expired February 28, 1914. Complainant used the ticket for transportation to Los Angeles and after arrival at that point proceeded to a ranch which he owned in the vicinity of San Diego, Cal. On February 19, 1914, a portion of defendant's line was washed out and traffic between Los Angeles and Salt Lake City was suspended. Complainant learned of the situation and made no effort to return to Salt Lake City until March 5, 1914, when he read in a newspaper that defendant's road was again in operation. The road had been in operation from 8 o'clock p. m. February 27, 1914. Complainant was advised by defendant's agent at San Diego upon inquiry that the time limit of his ticket had expired, and that it would not be honored for the return transportation to Salt Lake City. On March 6, 1914, complainant purchased a one-way ticket from San Diego to Salt Lake City by way of the Atchison, Topeka & Santa Fe Railway and defendant's line for \$33.85. The one-way fare from Los Angeles to Salt Lake City was \$30.

stated that the present adjustment satisfied the complaint, so that only the question of reparation remains.

Harvard is a local point on the Chicago & North Western Railway, hereinafter called the North Western, 63 miles northwest of Chicago, Ill. Sterling is on the North Western and the Chicago, Burlington & Quincy Railroad, hereinafter called the Burlington, 110 miles directly west of Chicago on the North Western and 114 miles on the Burlington. Rock Falls is located on the Burlington, 1 mile east of Sterling. Rockford is situated on the Illinois Central Railroad, the Burlington, the North Western, the Chicago, Milwaukee & St. Paul Railway, and the Chicago, Milwaukee & Gary Railway, 85 miles west of Chicago over the Illinois Central. Complainant contends that the maintenance of higher rates from Harvard than obtained from Rock Falls and Sterling, both of these points being farther than Harvard from Chicago, was unreasonable and unjustly discriminatory.

Manufacturers located at Sterling produce commodities similar to those made by complainant and sell in the same territory. But there is no evidence that manufacturers at Sterling or Rock Falls competed with complainant in the sale of the shipments in controversy, and except for a recital of the difference in rates complainant has introduced no evidence to prove damage.

The North Western contends that the circumstances and conditions surrounding transportation from Rockford and Sterling are substantially unlike those which obtain for transportation from Harvard to the same destinations. Sterling is between Chicago and East Clinton, Ill., where the North Western crosses the Mississippi River. Rockford, on the Illinois Central, is between Chicago and East Dubuque, Ill., which also is a Mississippi River crossing. Rates from the various crossings are equalized and determine the rates from intermediate points. Geographically Harvard is not within so-called percentage or prorating territory and therefore is beyond the direct influence of conditions which prevail from the Mississippi crossings. But by successive changes in rates defendants have placed it in prorating territory and accorded it the Rockford basis. Their contention is that their action was voluntary and should not be applied retroactively.

We find that the rates assailed are not shown to have been unreasonable or unjustly discriminatory, and an order dismissing the complaint will be entered.

No. 7705.
BRISTOL DOOR & LUMBER COMPANY
v.
SOUTHERN RAILWAY COMPANY ET AL.

Submitted December 30, 1915. Decided June 5, 1916.

Reparation awarded on account of unreasonable charges collected for the transportation of a mixed carload of doors, balusters, moldings, rough lumber, dressed lumber, medicine cabinets, and panel backs from Bristol, Tenn.-Va., to Passaic, N. J.

W. O. Came for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business with its principal office at Bristol, Tenn. By complaint, filed January 30, 1915, it alleges that the rate charged by defendants for the transportation of a mixed carload of building material, panel backs, and medicine cabinets from Bristol, Tenn.-Va., to Passaic, N. J., in September, 1910, was unreasonable. Reparation is asked. The complaint was presented to the Commission informally August 30, 1912.

The shipment consisted of 31,949 pounds of doors, balusters, moldings, rough lumber, and dressed lumber, 240 pounds of medicine cabinets, and 212 pounds of panel backs. It was billed as "building material" and was moved by the Southern Railway, the Philadelphia, Baltimore & Washington Railroad, the Pennsylvania Railroad, and the Erie Railroad. Charges were collected in the sum of \$123.12 at a rate of 38 cents per 100 pounds. There was no published rate on "building material." The carload rate applicable to doors, balusters, moldings, rough lumber, dressed lumber, and panel backs was the fifth-class rate of 38 cents per 100 pounds, minimum 24,000 pounds, while the less-than-carload rate applicable to medicine cabinets was the first-class rate of 93½ cents per 100 pounds. The shipment was governed by the official classification, rule 10 of which provided in part as follows:

* * * where the actual or estimated weight of the articles in any one class equals or exceeds the minimum carload weight provided therefor, such articles will be charged for at the minimum carload weight (actual weight if in excess of the minimum weight) and carload rate provided for same, and the other articles will be charged at the less-than-carload rates applicable thereto. * * *

The total charges applicable were therefore \$124.45, and the shipment was undercharged \$1.33.

The fifth-class rate of 38 cents from Bristol to Passaic was 1 cent over the fifth-class rate of 37 cents from Bristol to New York, N. Y. A commodity rate of 28 cents applied from Bristol to New York on balusters, doors, moldings, dressed lumber, and rough lumber in mixed carloads, minimum 30,000 pounds. Class rates from Bristol to Passaic are in all cases either the same or a differential of 1 cent or 2 cents per 100 pounds over the rates to New York.

Complainant contends that the charges collected were unreasonable to the extent that they exceeded the charges that would have accrued on the balusters, doors, moldings, dressed lumber, and rough lumber at a rate of 29 cents per 100 pounds, or 1 cent per 100 pounds over the commodity rate applicable to these commodities in mixed carloads from Bristol to New York, plus the less-than-carload charges applicable to the medicine cabinets and panel backs. The commodity rate on balusters, doors, moldings, dressed lumber, and rough lumber in mixed carloads from Bristol to Providence, R. I., Boston, Mass., and other points farther than Passaic from Bristol was and is 30 cents per 100 pounds. Effective February 19, 1913, defendants established a commodity rate of 29 cents per 100 pounds from Bristol to Passaic on balusters, doors, moldings, dressed lumber, and rough lumber in mixed carloads, minimum 30,000 pounds, which rate is still in effect. Defendants concede that this rate would have been reasonable when the shipment moved.

We find that the charges collected were unreasonable to the extent that they exceeded \$96.17, based on a rate of 29 cents per 100 pounds on 31,949 pounds of balusters, doors, moldings, dressed lumber, and rough lumber, a rate of 93½ cents per 100 pounds on 240 pounds of medicine cabinets, and a rate of 60½ cents per 100 pounds on 212 pounds of panel backs, which rates we find would have been reasonable. We further find that complainant made the shipment as described and paid and bore charges thereon herein found to have been unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued on the basis herein found reasonable, and that it is entitled to reparation in the sum of \$26.95, with interest from August 29, 1912. The undercharge of \$1.33 found outstanding may be waived.

An order awarding reparation will be entered, but as the rate of 29 cents herein found reasonable has been in effect for over two years no order will be entered for the future.

No. 8359.
E. I. DU PONT DE NEMOURS POWDER COMPANY
v.
MAINE CENTRAL RAILROAD COMPANY ET AL.

Submitted November 26, 1915. Decided June 5, 1916.

Rate of 17 cents per 100 pounds charged by defendants for the transportation of box shooks in carloads, from Smiths Mills, Me., to Newbridge, Del., found to have been unreasonable to the extent that it exceeded 15 cents. Reparation awarded.

Harvey S. Farrow for complainant.

O. H. Blatchford and *L. Snow, jr.*, for Maine Central Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged primarily in the manufacture of high explosives, with its principal offices in Wilmington, Del., a plant at Newbridge, Del., and a box-making plant at Smiths Mills, Me. By complaint, filed September 30, 1915, it alleges that the rate charged by defendants for the transportation of 18 carloads of box shooks from Smiths Mills to Newbridge, during the period from November 2, 1914, to February 20, 1915, was unreasonable and unjustly discriminatory. Reparation is asked on all of the shipments specified in the complaint and on an additional shipment proved at the hearing.

Smiths Mills is on the Maine Central's Sebago Lake branch northwest of Cumberland Mills, where the Maine Central connects with the line of the Boston & Maine from Portland, Me., through Cumberland Mills to Northampton, Mass. Newbridge is a local station on the Philadelphia & Reading Railway's line from Allentown, Pa., through Reading, Pa., to Wilmington, Del., a few miles north of Wilmington. The shipments were consigned to complainant at Newbridge by its plant at Smiths Mills and moved in accordance with routing instructions given: Maine Central to Cumberland Mills; Boston & Maine to Northampton, Mass.; New York, New Haven & Hartford Railroad to Harlem River, N. Y.; car floats or lighters to Communipaw, N. J.; Central Railroad of New Jersey to Allentown; Philadelphia & Reading to destination. Charges were collected in the total sum of \$1,739.10 on an aggregate weight of 1,023,000 pounds of shooks at the sixth-class rate of 17 cents per 100 pounds which was applicable. A rate of 15 cents is asked principally because a

rate of 15 cents applied to other points on the Reading in the vicinity of Newbridge and over other routes to Wilmington.

Newbridge is station No. 9940 on the Reading in agent Davis's tariff I. C. C. No. 35, Wilmington station No. 9944. A rate of 15 cents applied from Smiths Mills and grouped points to stations Nos. 9887 and 9848, inclusive, which complainant argues was intended to apply to stations Nos. 9887 to 9948, inclusive, for the reason that effective February 23, 1915, after the shipments involved had moved, this 15-cent rate was increased 5 per cent, to 15.8 cents, the decimal being rounded upward, and made to apply to stations Nos. 9887 to 9948, inclusive.

Prior to November 14, 1913, the rate on forest products, including box shooks, from Smiths Mills to Newbridge had been the sixth-class rate applicable from Brunswick territory in Maine, including Smiths Mills, to eastern trunk line territory, including Newbridge. In November, 1913, in order to eliminate fourth section departures and pursuant to a general readjustment of rates from New England the Maine Central substituted the Pittsburgh class-rate scale for the Buffalo scale, thereby increasing the sixth-class rate from Brunswick territory to eastern trunk line territory from 15 cents to 17 cents. But the Boston & Maine and other carriers continued to charge a 15-cent sixth-class rate, and in order to protect shippers on its line the Maine Central established a commodity rate of 15 cents on forest products from and to the territories involved, including box shooks from Smiths Mills to stations Nos. 9887 to 9948, inclusive, effective April 15, 1914. The item naming these rates was canceled effective October 5, 1914, reference being made for future rates to Maine Central tariff I. C. C. No. C 1648, also effective October 5, 1914. The latter tariff carried the item naming destination stations Nos. 9887 to 9948, to which complainant objects.

Defendants admit that the designation of destination points to which particular rates shall apply in descending sequences of station numbers is unusual and that the conditions up to station No. 9887 and beyond to Wilmington are identical.

The rate asked applied to nearly all points in the vicinity of Newbridge and ceased to apply to Newbridge solely because of an error in tariff publication. We find that the rate charged was unreasonable to the extent that it exceeded 15 cents per 100 pounds; that complainant made the shipments as described and paid and bore charges thereon at the rate herein found unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable, and that it is entitled to reparation in the sum of \$204.60, with interest from May 29, 1915.

An order will be entered accordingly.

No. 7612.
IOWA-DAKOTA GRAIN COMPANY ET AL.
v.
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted November 20, 1915. Decided June 5, 1916.

Upon complaint that the rates charged by defendants on corn from interior Iowa points to Council Bluffs, Iowa, on interstate traffic, were unreasonable to the extent that they exceeded the rates contemporaneously applicable on like intrastate traffic and unduly prejudiced complainants to the advantage of shippers having elevators at Council Bluffs; *Held*, That the interstate rates are not shown to have been unreasonable, and that the alleged discrimination was due entirely to the failure of defendants to collect their legal rates on interstate shipments of corn stored in transit at Council Bluffs.

C. E. Childe and *J. H. Henderson* for complainants.

A. P. Humburg and *R. H. Widdicombe* for Illinois Central Railroad Company; Chicago, St. Paul, Minneapolis & Omaha Railway Company; and Chicago & North Western Railway Company.

C. C. Wright for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are corporations engaged in the purchase and sale of grain, with offices at Sioux City, Iowa. By complaint, filed December 23, 1914, they allege that the separately established rates charged by defendants for the transportation of numerous carload shipments of corn moved between July, 1912, and July, 1914, from certain stations in Iowa on the Illinois Central Railroad and on the Chicago, St. Paul, Minneapolis & Omaha Railway, hereinafter called the Omaha, and to Council Bluffs, Iowa, destined to points in Missouri, Kansas, Arkansas, and Texas were unreasonable and unjustly discriminatory to the extent that they exceeded the intrastate rates on corn contemporaneously in effect from the same points of origin to Council Bluffs. Reparation is asked and the establishment of reasonable and nondiscriminatory rates for the future.

The shipments originated at Carnes and Hospers, Iowa, on the Omaha, and at Ticonic, Kennebec, Cleghorn, Cherokee, Remsen, and Oyens, Iowa, on the Illinois Central. All of the shipments but one moved between February, 1913, and July, 1914. The excepted shipment moved July 7, 1912, from Remsen. The shipments from Carnes and Hospers moved to Council Bluffs by way of Sioux City and the

Chicago & North Western Railway, hereinafter called the North Western; those from points on the Illinois Central by way of Sioux City or Onawa, Iowa, and the North Western. They were re-consigned at Council Bluffs by way of the Chicago, Burlington & Quincy Railroad, the Chicago, Rock Island & Pacific Railway, or the Missouri Pacific Railway, to Kansas City, Mo., St. Joseph, Mo., Atchison, Kans., Little Rock, Ark., or Fort Worth, Tex. No joint commodity rates were in effect between the points of origin and destination and charges were collected by defendants at the local rates to Council Bluffs and the proportional rates applicable beyond. The proportional rates in effect from Council Bluffs were 5.5 cents to Kansas City, St. Joseph, and Atchison, 18 cents to Little Rock, and 28 cents to Fort Worth, and are not assailed.

The rates on grain between points in Iowa are prescribed by the Board of Railroad Commissioners of Iowa on a mileage scale. These rates, when for single-line application, have been filed with this Commission and in the absence of joint rates are applicable as components of through rates on interstate traffic. Joint rates are prescribed by the state authorities for traffic moving locally within the state of Iowa over two or more railroads on the basis of 80 per cent of the combined local rates. This rule, which is not made applicable to interstate traffic in any tariff on file with this Commission, reads in part as follows:

(1) The freight charge on a shipment of freight passing over two or more railroads within this state shall be 80 per cent of the sum of the local charges for the distance each railroad hauls the freight.

(3) In case the application of the 80 per cent rule would make the rate less than the continuous mileage rate, then the continuous mileage rate shall be the joint rate.

The obvious effect of this rule is to make lower rates applicable on intrastate traffic passing over two or more lines than apply on interstate traffic between the same points. The reductions effected by the application of the 80 per cent rule in the combination rates on corn from the points of origin to Council Bluffs are shown in the following table:

To Council Bluffs from—	Miles.	Combination of local rates.	80 per cent of combination.	Difference.
Ticonic.....	73	9.7	7.8	1.9
Kennebec.....	67	9.5	7.6	1.9
Cleghorn.....	131	11.6	9.3	2.3
Cherokee.....	121	11.3	9.1	2.2
Remsen.....	132	11.6	9.2	2.4
Oyens.....	128	11.6	9.2	2.4
Carnes.....	133	11.7	9.3	2.4
Hospers.....	146	12.0	9.6	2.4

Complainants compete in the purchase of grain at points in the interior of Iowa, and in its sale at lower Missouri River and southern points, with grain dealers having elevators at Council Bluffs. Dealers at Council Bluffs unload all shipments of corn into their elevators at Council Bluffs, paying only the intrastate rates, and reship to final destinations at the proportional rates applicable from Council Bluffs. Complainants have no facilities at Council Bluffs for the storage of grain and either ship through to destination or reconsign their shipments at Council Bluffs, paying the rates legally applicable to interstate transportation. The difference between the full combination local rates to Council Bluffs and the 80 per cent rule rates ranges from 1.9 cents per 100 pounds to 2.4 cents on shipments from the points of origin. The disadvantage to complainants is substantial.

There apparently is discrimination, but whether or not it is unjust depends upon the lawfulness of the application of the intrastate rates to Council Bluffs under all of the circumstances disclosed. The power of the state authorities to prescribe and regulate rates for the carriage of freight locally within the state is indisputable, and it is only where the proper application of those rates operates to the disadvantage or prejudice of an interstate shipper that our authority to remove discrimination should be exercised. If the interstate rates for the initial movement are intrinsically reasonable and strict observance by the carriers of their tariff rules and regulations would prevent the discrimination alleged, no proper case arises for an order requiring the removal of the discrimination by the maintenance of identical rates on state and interstate traffic.

The rates on grain from Council Bluffs to lower Missouri River and southern points are, as previously stated, proportional rates, applicable on traffic originating beyond. Local rates, higher than the proportional rates, are published from Council Bluffs to Kansas City, St. Joseph, Atchison, and Little Rock, but are seldom, if ever, applied. No local commodity rate is published from Council Bluffs to Fort Worth. Inbound expense bills are surrendered by the consignor at Council Bluffs as proof that the grain originated at an interior point and is entitled to the proportional rates out. During the period under consideration the tariffs of the carriers leading from Council Bluffs to the destinations in question provided for the absorption of elevation charges at Council Bluffs and of connecting lines' inbound and outbound switching charges to and from the elevators. These absorptions invariably were made on all grain shipped from Council Bluffs, apparently recognizing that storage in an elevator there was but the temporary suspension of a through

interstate movement. The inbound intrastate rate, which was used as one component of the through rate charged from the interior point to final destination, was not lawfully applicable to the through movement. As was said in *Merchants Exchange of St. Louis v. B. & O. R. R. Co.*, 34 I. C. C., 341, where a like situation was presented:

All the carriers leading from St. Louis provide for the absorption of elevation charges of one-fourth cent per bushel on outbound shipments of grain that has been stored in elevators at St. Louis. This absorption is made on the theory that the inbound and outbound movements comprise a through movement and that the grain has been elevated in transit. Whenever the absorption is made the grain can not lawfully move forward except at the balance of the through rate.

Since this proceeding was instituted defendants have discontinued the practice of absorbing elevation charges on shipments of grain stored at Council Bluffs and reshipped to the destinations in controversy.

It is clear that unjust discrimination would never have been alleged if the carriers had always observed their legal rates for the interstate movement. The same charges would have applied on all shipments whether stored temporarily in elevators at Council Bluffs or reconsigned in the original cars.

Complainants also contend that the combination rates charged for the transportation of corn from the points previously named to Council Bluffs were unreasonable to the extent that they exceeded rates based on 80 per cent of the combination rates. Specific rates no higher than those asked have been in force from Carnes and Hospers since November 9, 1914, but the Illinois Central has declined to publish joint rates on the 80 per cent basis from stations on its line to Council Bluffs. The combination rate to Council Bluffs, charged on the shipment of July 7, 1912, from Remsen, was assailed in *Flanley Grain Co. v. C., B. & Q. R. R. Co.*, Docket No. 5802, unreported. It was not found to have been unreasonable and the complaint was dismissed. Subsequently a rehearing was denied and conditions have not changed since.

Complainants urge that the joint rates prescribed by the state commission are reasonable, that they were established after a full investigation in which all parties interested were given an opportunity to be heard, and that they have not been contested by defendants. Defendants insist, however, that the joint rates on corn in Iowa are compulsory, and are on an unreasonably low basis. Comparisons with mileage rates on corn in Illinois and South Dakota which are submitted tend to show that the rates in Iowa applicable to interstate traffic are not unreasonable.

We find that the rates assailed are not shown to be unreasonable or unjustly discriminatory, and the complaint will be dismissed.

It is apparent, however, that defendants' failure to apply the interstate rates to Council Bluffs on shipments stored in elevators there and subsequently forwarded under proportional or reshipping rates to interstate destinations and to collect charges on that basis resulted in such shipments being undercharged.



No. 7508.

M. MOORE GRANITE & MONUMENTAL WORKS

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted September 7, 1915. Decided June 5, 1916.

Rate charged for the transportation of portions of two shipments of granite monuments and parts from Barre, Vt., to Hillside, Ill., not shown to have been unreasonable. Unjust discrimination previously existing found to have been removed, and complaint dismissed.

A. J. Killen for complainant.

H. C. Shurtleff for Central Vermont Railway Company, Boston & Maine Railroad, and Montpelier & Wells River Railroad.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in handling stone and granite and manufacturing monuments at Hillside, Ill. By complaint, filed November 24, 1914, it alleges that the rate of 27 cents per 100 pounds charged by defendants for the transportation of portions of two shipments of granite monuments and parts from Barre, Vt., to Hillside, in March, 1914, and June, 1914, was unreasonable and unjustly discriminatory and that in assessing charges defendants failed to deduct for dunnage furnished. Reparation is asked and the establishment of reasonable carload and less-than-carload rates for the future.

The shipment in March, 1914, consisted of 28 boxes of dressed granite, squared and polished on one side or more, for monumental purposes, and was forwarded in two cars. The charges on 21 boxes,

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weighing 44,400 pounds, contained in one car are in issue. The shipment in June, 1914, consisted of 8 boxes containing a completed dressed granite soldier's monument, including a granite statue, and was forwarded in two cars. The charges on 5 boxes, weighing 30,500 pounds, contained in one of the cars, are in issue.

The official classification, which governed, provided a fifth-class carload rating on granite, marble, or stone monuments and parts thereof, and charges were collected in the total sum of \$202.23 on the parts of the shipments in issue at a rate of 27 cents per 100 pounds. The fifth-class rate was 28 cents per 100 pounds and the shipments were undercharged. The classification also provided a sixth-class carload rating on marble, granite, jasper, onyx, and stone, n. o. s., rough quarried, sawed, hammered, chiseled, or dressed, but not polished, and a fifth-class rating on polished blocks, slabs, or pieces. A commodity rate of 19 cents per 100 pounds was maintained by defendants from Barre to Hillside on—

stone and granite, carloads, carried under official classification at sixth-class rates, to include stone and granite, polished or planed, carloads, but not to apply on monuments or parts thereof, minimum carload weight as per official classification.

Complainant objects to the distinction in classification and rates between rough or dressed granite, and monuments and parts thereof.

We found in *Nebraska State Railway Commission v. O. V. Ry. Co.*, 32 I. C. C., 41, that the classification rating and the rate on monumental granite from Barre and other quarry points in Vermont to certain Mississippi River crossings were unjustly discriminatory and ordered the establishment of a classification rating and rate not in excess of the rating and rate contemporaneously applied to dressed and polished building granite. Conformably to our order in that case defendants published an exception to the classification, effective April 20, 1915, prescribing a sixth-class carload rating for marble, granite, jasper, onyx, and stone, n. o. s., in blocks, slabs, or pieces, rough quarried, irrespective of value, and also for chiseled, dressed, hammered, polished, sawed, or otherwise finished, when the actual value was not in excess of \$1.75 per 100 pounds and so certified by the consignor. Provision was also made for a fifth-class carload rating when the value was in excess of \$1.75 per 100 pounds or when the consignor did not certify the actual value. The maximum valuation under the lower rating was subsequently changed from \$1.75 to \$2.25 per 100 pounds. On April 20, 1915, defendants established a carload commodity rate of 20 cents per 100 pounds from Barre to Hillside on granite and stone, n. o. s., blocks, slabs, or pieces, rough quarried, any value, and on chiseled, dressed, hammered, polished, sawed, or otherwise finished, when the actual value is not in excess

of \$1.75 per 100 pounds and so certified by the consignor. This rate is still in effect, but since May 1, 1916, the valuation figure has been \$2.25 per 100 pounds.

Complainant's evidence is vague and indefinite, and insufficient to show that the rate charged was unreasonable. The discrimination which previously existed in the application of the higher rate on monuments and parts than on rough, dressed, or polished granite used for other purposes has been removed, and is not shown to have injured complainant while it existed. The reparation asked must therefore be denied.

Defendants contend that charges on the statue in the shipment of June 11, 1914, should have been assessed at one and one-half times first-class, which was the less-than-carload rating for statuary. The official classification provided in substance that when parts or pieces constituting one or more complete articles are shipped under one bill of lading at one time, by one shipper, to one consignee and destination, they would be charged for at the rate provided for the complete article. The statue constituted a minor but essential part of the monument, and under the classification should have taken the rating provided for the monument.

Defendants' tariffs authorized a dunnage allowance on shipments in open cars of not more than 500 pounds per car, provided the actual weight of the racks, standards, strips, or supports used was specified on the shipping order. Complainant failed to comply with this requirement and does not attack the reasonableness of the rule.

An order will be entered dismissing the complaint.

40 L. C. C.

No. 7711.
WOODSON & GRAVES
v.
VIRGINIAN RAILWAY COMPANY ET AL.

Submitted November 15, 1915. Decided June 5, 1916.

Rate charged for the transportation of certain carload shipments of lumber from Wilmington, N. C., to Roanoke, Va., found to have been unreasonable. Reparation awarded.

Wm. E. Graves for complainants.

E. W. Knight and *G. A. Wingfield* for Virginian Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainants are Henry P. Woodson and William E. Graves, co-partners, engaged in the lumber business at Lynchburg, Va. By complaint, filed February 1, 1915, they allege that the rate of 16.5 cents per 100 pounds charged by defendants for the transportation of 20 carloads of lumber from Wilmington, N. C., to Roanoke, Va., between June, 1911, and March, 1912, inclusive, was unreasonable to the extent that it exceeded 14.5 cents per 100 pounds. Reparation is asked. The claims on 16 shipments were presented to the Commission informally June 19, 1913. Claims on the remaining 4 shipments are barred by the statute of limitation.

One of the 16 shipments moved: Seaboard Air Line Railway to Albemarle, Va.; Virginian Railway thence to destination. The other 15 shipments moved: Atlantic Coast Line Railroad to Jarratt, Va., and Virginian Railway beyond. Charges were collected on all of the shipments at a joint rate of 16.5 cents per 100 pounds. The intermediate rates contemporaneously in effect on lumber in carloads to and from Albemarle, Va., over the route traversed by the first shipment, hereinafter called the Seaboard route, were 10.5 cents per 100 pounds from Wilmington to Albemarle and 4 cents from Albemarle to Roanoke, aggregating 14.5 cents per 100 pounds. A rate of 9 cents per 100 pounds applied on lumber from Wilmington to Jarratt and a proportional rate of 7 cents from Jarratt to Roanoke, making a total rate of 16 cents per 100 pounds. Effective August 20, 1912, a joint rate of 13.5 cents per 100 pounds was established over the Seaboard

route, while effective September 10, 1912, a joint rate of 14.5 cents per 100 pounds was established over the route through Jarratt. These joint rates are still in effect and do not exceed the aggregates of the intermediate rates. The former discrepancies were covered by appropriate fourth section applications.

The rates charged were prima facie unreasonable to the extent that they exceeded the Altavista and Jarratt combinations. *Windsor Turned Goods Co. v. C. & O. Ry. Co.*, 18 I. C. C., 162.

The Virginian Railway was the only defendant represented at the hearing. It denies that the rate assailed was unreasonable but is willing to make reparation on the shipment over the Seaboard route on the basis of the Altavista combination. Its witness stated that when the Virginian Railway began operations in 1909 a rate of 16.5 cents per 100 pounds was in effect on lumber in carloads from Wilmington to Roanoke applicable in connection with the Norfolk & Western Railway through Lynchburg, Va., and that the same rate was established by the Virginian Railway and its connections; that February 1, 1912, the rate through Lynchburg was reduced to 14.5 cents, and that subsequently the rate through Jarratt was reduced to 14.5 cents while the rate through Alberta and Altavista over the Seaboard route was reduced to 13.5 cents, the reductions being attributed to reductions by the Norfolk & Western and its connections. The former 16.5-cent rate is compared with rates ranging from 16 cents per 100 pounds to 16.85 cents on lumber in carloads for single-line hauls of 361 miles between points on the Chesapeake & Ohio, the Virginian, and the Norfolk & Western railways.

Defendants' evidence does not justify the former joint rate of 16.5 cents, which exceeded the Altavista and Jarratt combinations, and we find that the rate assailed was unreasonable to the extent that it exceeded the aggregates of the intermediate rates contemporaneously in effect over the routes of movement, viz, 14.5 cents per 100 pounds on the shipment moved over the Seaboard route and 16 cents per 100 pounds on the shipments moved through Jarratt. We further find that complainants made the shipments as described and paid and bore charges thereon at the rate herein found to have been unreasonable; that they have been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rates herein found reasonable; and that they are entitled to reparation with interest. The exact amount of reparation due can not be determined upon this record, and complainants should prepare a statement showing as to each shipment on which reparation is claimed the point of origin, point of destination, date of shipment and delivery, car number and initials, route, weight, rate ap-

plied, charges collected, and the amount of reparation due under our findings herein, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared by complainants and verified by defendants we will consider further entering an order awarding reparation. As the joint rates now in effect do not exceed the aggregates of intermediate rates, no order for the future is necessary.



No. 7607.

ADVANCE LUMBER COMPANY

v.

ATLANTA, BIRMINGHAM & ATLANTIC RAILROAD
COMPANY ET AL.

Submitted February 14, 1916. Decided June 5, 1916.

Demurrage charges at Birmingham, Ala., on five carloads of lumber shipped from Chelsea and other Alabama points to Avondale, Ala., milled there, and reshipped to interstate destinations, found to have been unlawfully assessed. Reparation awarded.

J. T. Slatter for complainant.

I. W. Rouzer for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business, with its principal office at Birmingham, Ala. By complaint, filed December 17, 1914, it alleges that the demurrage charges collected by the Atlanta, Birmingham & Atlantic Railroad, hereinafter called defendant, on five carloads of lumber shipped in October and November, 1912, from Chelsea, Grasmere, Harpersville, and Cragford, Ala., to Avondale, Ala., milled there and reshipped to interstate destinations, were unjust and unreasonable. Reparation is asked. The claim was presented to the Commission within two years after the causes of action accrued.

The points of origin are local stations on defendant's line. Avondale is a station on the Southern Railway within the corporate and switching limits of Birmingham. Defendant's rails do not reach Avondale but terminate at Birmingham, approximately 2 miles

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from Avondale, and traffic for Avondale is delivered at Birmingham to the Southern Railway.

The shipments involved were consigned by complainant to the "Ewart Lumber Company, Avondale, Ala." They reached Birmingham on different dates in October and November, 1912, and were held on defendant's rails until the freight charges, plus \$39 demurrage, were paid, when they were released to the Southern Railway, which delivered them to consignee at Avondale.

Defendant's tariffs published through rates from the points of origin to Avondale. The Southern Railway did not concur in these rates, but defendant provided in its tariffs for absorption of the Southern Railway's switching charges from Birmingham to Avondale. Neither the defendant's tariffs nor those of the Southern Railway provided for payment of freight charges as a prerequisite to the release of cars to the switching line. Defendant contracted to give Avondale delivery, and in the absence of tariff authority could not lawfully collect demurrage charges for the detention of the cars from the switching line. *National Clay Works v. M. & St. L. R. R. Co.*, 38 I. C. C., 353.

We find that the demurrage charges were unlawfully assessed, that complainant made the shipments as described, and paid and bore the demurrage charges herein found unlawful, and that it is entitled to reparation from the defendant in the sum of \$39, with interest from December 12, 1912. An order will be entered accordingly.

40 I. C. C.

No. 7685.
BENJAMIN PELLER
v.
PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted May 4, 1916. Decided June 5, 1916.

1. Demurrage and track storage charges on two carloads of burned enamel ware from Shady Side, Ohio, to Pittsburgh, Pa., found to have been improperly assessed pending the settlement of a dispute as to the rate legally applicable and subsequently properly assessed.
2. General damages of the kind asked, including counsel fees, not recoverable in proceedings before the Commission.
3. Complaint dismissed.

Aronson & Aronson for complainant.

Patterson, Crawford & Miller for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a dealer in junk and secondhand goods at Pittsburgh, Pa. By complaint, filed January 20, 1915, he alleges that unreasonable and unjustly discriminatory charges were assessed by defendants on four carloads of burned enamel ware shipped from Shady Side, Ohio, to Pittsburgh. Reparation is asked in the sum of \$1,000, which includes loss of time of complainant, counsel fees, cost of prosecution of suits in courts, and the value of two of the shipments which were sold at public auction.

The facts are submitted by stipulation, and are substantially as follows: Two of the shipments were made on January 21, 1913, one to B. Peller, Twenty-sixth street station, the other to T. J. Maloney, Allegheny Valley and Twenty-ninth street station. The third shipment was made on January 24, 1913, to T. J. Maloney at the Twenty-ninth street station, and the fourth on January 29, 1913, to the Pittsburgh Iron & Metal Company at the Twenty-sixth street station. Upon arrival of the shipments at the yards of the Pennsylvania Company at Pittsburgh they were switched under an arrangement with the Pennsylvania Railroad Company, hereinafter referred to as defendant, to their respective points of destination. The shipments were described in bills of lading by complainant or his agent as enamel ware, nested, and charges were assessed at a rate of 10 cents

per 100 pounds. The classification rated enameled ware fourth class. The fourth-class rate from Shady Side to Pittsburgh was 10½ cents per 100 pounds. The shipments actually consisted of burned enamel ware. Notice was sent by the defendant to the consignees as soon as the cars arrived, who refused to accept delivery on learning that the shipments had been erroneously billed. Complainant contended that the shipments consisted of scrap iron and that the charges should have been based on a commodity rate of \$1 per gross ton. Negotiations were undertaken to determine the character of the shipments and the rate properly applicable, and on February 19, 1913, defendant finally informed complainant that the charges on the shipments would be reduced to those that would have accrued at the rate on scrap iron. The two cars consigned to the Twenty-sixth street station were promptly delivered, without payment of demurrage, but the defendant refused to deliver the two cars consigned to T. J. Maloney at the Twenty-ninth street station except upon payment of demurrage charges which had accrued pending the investigation into the character of the goods and the proper charges to be applied. The consignee purchased the goods from complainant for delivery at destination and, in view of the controversy, looked to complainant to liquidate the charges assessed. Complainant refused to pay the demurrage charges and informed the defendant that unless the cars were delivered on or before March 4, 1913, he would have no further use for the goods and would be compelled to look to defendant for reimbursement. Complainant was advised on March 14, 1913, that delivery would be made without charge for demurrage, and on March 18, 1913, refused to accept delivery. On April 15, 1913, complainant was advised that unless delivery was accepted the property would be disposed of at public auction, which was done on September 19, 1913. The sale realized \$2.70 net.

The reasonableness of the rates assessed is not attacked and the record discloses no unjust discrimination. The legality of the demurrage charge is in issue, although it does not appear that such charges have ever been collected.

We have held that where the reasonableness of established rates is disputed the complainant is not entitled to a refund of demurrage charges which have accrued because of his refusal to accept delivery pending the settlement of the dispute. *Coomes v. O., M. & St. P. Ry. Co.*, 13 I. C. C., 192, 195. But if the delivering carrier demands more than the lawfully established rate the consignee is released from the obligation to pay demurrage while the dispute continues and reparation may be awarded to the extent of the demurrage charges so paid. *Porter v. St. L. & S. F. R. R. Co.*, 15 I. C. C., 1, 5; *Becker v. P. M. R. R. Co.*, 28 I. C. C., 645, 658. The dispute here was over the application of the established legal rates, the ascertain-

ment of which was made necessary by the erroneous billing by complainant or his agent. When the proper application was determined and the shipments were offered by defendant without demand for demurrage charges it became complainant's duty to accept delivery or to instruct as to their disposition.

We find that the demurrage and track storage charges which accrued after March 14, 1913, on the two cars in controversy were properly assessed, and that those which accrued previously were unlawful.

The Commission can not award reparation for damages of the kind asked, such as counsel fees, loss of time, cost of prosecution of suits in courts, or the value of the shipments in controversy.

An order will be entered dismissing the complaint.



No. 4718.

CHEROKEE LUMBER COMPANY ET AL.

v.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.



Submitted November 29, 1915. Decided June 5, 1916.



Upon rehearing, claim for reparation on 17 carloads of lumber from Roseboro and Garland, N. C., to points north of the Virginia cities found barred by the statute of limitation and complaint dismissed.

John R. Walker for complainants.

R. Walton Moore for Atlantic Coast Line Railroad Company; Richmond, Fredericksburg & Potomac Railroad Company; and Washington Southern Railway Company.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

The original complaint herein attacked the local rates on lumber in carloads from points on the Atlantic Coast Line Railroad between Fayetteville, N. C., and Wilmington, N. C., to Virginia cities and the proportional rates applicable from the same points of origin to Virginia cities on shipments destined beyond. Reparation was

asked on numerous carload shipments, including 7 shipments by Wood & Skilton from Roseboro, N. C., and 10 shipments by the Cherokee Lumber Company from Garland, N. C., to various destinations north of the Virginia cities. We found in our original report, 27 I. C. C., 438, that the local and proportional rates from points south of Fayetteville to Virginia cities were unjustly discriminatory against the complainants to the extent that they exceeded rates from points north of Fayetteville on the Sanford branch of the Atlantic Coast Line, but reparation was denied. About six months later, Wood & Skilton and the Cherokee Lumber Company, who were parties complainant, filed a separate formal complaint for the sole purpose of obtaining reparation on the 17 shipments above referred to. We found in Docket No. 6376, unreported, that an original complaint was involved which was filed more than two years after the shipments to which it related were delivered and that the claim for reparation was barred by the statute of limitation. Subsequently on a petition by the complainants in that case, we reopened the instant case to the extent that it relates to the reasonableness of charges collected on the 17 shipments in controversy and consolidated the two cases.

The shipments all moved prior to April 10, 1911, at joint rates from the points of origin to the points of destination. The authorized basis for fixing the amounts of such joint rates was and is to add to the local rates up to the Virginia cities the specifics of the northern lines beyond. The rates in issue exceeded the authorized bases by one-half cent per 100 pounds. The complaint in this case attacked only the local and proportional rates up to the Virginia cities. The joint rates applicable to the shipments in question were not attacked until the petition for rehearing was filed April 28, 1915, more than two years after the shipments moved.

We find that the claim for reparation here presented is barred by the statute of limitation and the complaint must therefore be dismissed. An order will be entered accordingly.

No. 7747.
THORNE, NEALE & COMPANY
v.
WABASH RAILROAD COMPANY ET AL.

Submitted July 17, 1915. Decided June 5, 1916.

Complainant, by its agent, misbilled three carload shipments of coal from Plymouth Junction, Pa., to Sharon, Ill., in error for Peoria; complaint that the shipments had been misrouted by the defendants, found to be without merit and dismissed.

E. B. Wilkinson and *M. F. Gallagher* for complainant.

T. H. Lynch for Wabash Railroad Company.

L. F. Perry for Delaware & Hudson Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in mining and shipping coal, with its principal office at Philadelphia, Pa. By complaint, filed February 12, 1915, it alleges that, due to misrouting, defendants collected unjust and unlawful charges for the transportation of three carloads of coal from Plymouth Junction, Pa., to Chicago, Ill. Reparation is asked.

The Kingston Coal Company delivered three carloads of nut coal to the Delaware & Hudson Company at Plymouth Junction, two on July 31, 1913, and one on August 26, 1913, consigned to the Sharon Coal Company, Sharon, Ill., specifically routed "D&H-Schdy.-NYC-Buffalo-Wabash-CP&St.L." The shipments were moved by the Delaware & Hudson Company to Schenectady, N. Y., thence by the New York Central Railroad to Buffalo, N. Y. They were stopped in transit at Buffalo by defendants, because Sharon was not reached by the Chicago, Peoria & St. Louis Railroad. Sharon is situated about 10 miles from Geneseo, Ill., a local station on the Chicago, Rock Island & Pacific Railway, hereinafter called the Rock Island, the nearest railroad point at which consignments to Sharon can be delivered. The consignor was advised and changed the routing to include Rock Island delivery. The shipments were then moved from Buffalo by the Wabash Railroad to Chicago, and by the Rock Island thence to Geneseo. They were unclaimed at Geneseo, and the shipper was requested to furnish disposition instructions. The ship-

per replied that complainant for whose account the shipments were made would make the required disposition. Complainant consulted with the Wabash agent at Chicago, representing to him that the coal was intended for delivery to the Sharon Coal Company at Peoria, and that the shipper's instructions had not been followed. In order to expedite delivery and correct the alleged error, the Wabash acted promptly upon complainant's representation and directed the Rock Island to back haul two of the shipments to Chicago, from which point the Wabash intended to participate in the movement to Peoria. The Rock Island complied with these instructions, but when the delivery to the Wabash was made at Chicago, it was discovered that complainant's representations were incorrect and that Geneseo was the proper destination under the instructions furnished by the consignor. The third car in controversy was apparently back hauled from Geneseo to Chicago with the others, but it does not appear by what authority. Complainant accepted the shipments at Chicago under protest and paid the demurrage and transportation charges for the portion of the movement from Chicago to Geneseo and return. The coal was then reshipped to other western points.

The reasonableness of the rates charged is not assailed and nothing specific has been furnished regarding the demurrage charges. The three shipments aggregated 261,836 pounds, or 130.9 net tons. No joint through rate was applicable from the point of origin to Geneseo and charges apparently were collected on the combination of intermediate rates to and from Chicago. The legal rates were \$3.50 per gross ton to Chicago; \$1.30 per net ton from Chicago to Geneseo; and \$1.72 per net ton from Geneseo to Chicago. The record does not disclose the charges assessed up to Chicago. It does show, however, that \$421.69 was collected after the three shipments first reached Chicago, composed of \$166.17 freight charges from Chicago to Geneseo, \$68 demurrage at Geneseo, \$133.52 freight charges for the back haul from Geneseo, and \$54 demurrage at Chicago. The legal rate applicable from Chicago to Geneseo apparently was not applied on the shipment of August 26, 1913, and one of the shipments of July 31, 1913. There are therefore outstanding undercharges due the Rock Island on these shipments for the movements to and from Geneseo.

Complainant concedes the consignor's initial error in routing the shipment to Sharon, but insists that the defendants substituted Geneseo as the point of delivery and the Rock Island as the delivering carrier without authority; that the back haul from Geneseo to Chicago was unauthorized; and that the demurrage charges at Chicago and all charges collected after the shipments first left Chicago were unjust and unlawful.

The evidence establishes that the consignor authorized defendants to change the destination in the billing from Sharon to Geneseo and to include the Rock Island as a participating carrier. It does not appear that complainant specifically directed the Wabash to return the shipments to Chicago, but it does appear that the original misconsignment to Geneseo was due to the error of complainant's agent at Plymouth Junction, and that in refusing receipt of delivery at the billed destination and insisting upon delivery at another point, complainant impliedly authorized the movement. The back haul movement to Chicago was due to a mutual mistake of fact for which the complainant was primarily responsible.

We find that the shipments involved were not misrouted, and an order will be entered dismissing the complaint.

No. 8573.

BURLINGTON SAND & GRAVEL COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY
COMPANY ET AL.

Submitted April 18, 1916. Decided June 5, 1916.

Rate charged for the transportation of sand and gravel in carloads from Burlington, Wis., by way of the Chicago, Milwaukee & St. Paul Railway to Chicago, found to be unduly prejudicial to the extent that it exceeds the rate contemporaneously maintained from other points in the so-called outer zone to the same destination.

William W. Storms for complainant.

J. N. Davis and *O. W. Dynes* for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in mining and shipping sand and gravel, with a plant at Burlington, Wis. By complaint, filed January 10, 1916, it alleges that the rates charged by defendants for the transportation of sand and gravel in carloads from Burlington to Chicago, Ill., are unreasonable, unjustly discriminatory, and in violation of the fourth section.

Burlington is served by the Chicago, Milwaukee & St. Paul Railway, hereinafter called the Milwaukee, and the Minneapolis, St. Paul and Sault Ste. Marie Railway, hereinafter called the Soo line. Complainant's plant represents an outlay of approximately \$70,000. Operations were conducted for a brief period in October and November, 1915, and were to have been resumed in April, 1916. No shipments had been made to Chicago up to the time of the hearing because of the rate adjustment. It appeared at the hearing that none of the rates contravened the fourth section, and complainant abandoned its allegation of unreasonableness so that only the issue of unjust discrimination remains for determination.

Sand and gravel rates from certain Wisconsin and Illinois points to Chicago and Chicago rate points are maintained on a group or zone basis. Shipping points within the state of Illinois generally comprise what is designated as the inner zone and shipping points in Wisconsin the outer zone. Burlington is in the outer zone, 81 miles from Chicago by the Milwaukee and 72 miles by the Soo line.

Complainant bases its allegation of discrimination upon the application of a rate of 4 cents per 100 pounds on sand and gravel in carloads from Burlington to Chicago by way of the Milwaukee, while a rate of $1\frac{1}{4}$ cents per 100 pounds applies from its competitors' pits in the outer zone, at such points as Beloit, Janesville, Waukesha, and Fontana, Wis. The $1\frac{1}{4}$ -cent rate from Fontana includes transportation over an electric line 5 miles to the tracks of the Milwaukee at Walworth. The distances to Chicago average about 90 miles. A $1\frac{1}{4}$ -cent rate applies from Burlington by way of the Soo line, but switching charges at Burlington and at Chicago render the Soo line route of little value to complainant.

Complainant's plant has a capacity of from 40 to 50 carloads a day, the average weight of a carload being about 90,000 pounds. Sand and gravel is sold in the Chicago market by the cubic yard, estimated to weigh 3,000 pounds. The selling price is about 85 cents a cubic yard. Shipments from complainant's plant to Chicago at the present 4-cent rate would be subject to a freight charge of \$1.20 per cubic yard, while the charge on its competitors' shipments at the $1\frac{1}{4}$ -cent rate would amount to $52\frac{1}{2}$ cents per cubic yard.

Proposed increased rates from outer zone points were considered in *Sand and Gravel Rates from Wisconsin Points to Chicago, Ill., and Other Points*, 34 I. C. C., 467, where we held that a differential of more than one-fourth cent per 100 pounds between points in the outer zone and points in the inner zone had not been justified. The carriers were also before the Illinois state commission at that time in an effort to increase the rates from the inner zone points. The intrastate increases were denied, and defendants are now seeking

our approval of a rate basis which will permit a higher level of rates from both zones. The record made, however, is not sufficiently comprehensive to warrant consideration of the differential adjustment as a whole or of the general adjustment from the respective zones. It should be stated that the 4-cent rate from Burlington results in a differential of $2\frac{1}{2}$ cents over the rate from inner zone points and violates the spirit of our order in the case cited. A proposed increase by the Soo line in its rate on sand and gravel from Burlington and Waukesha to Chicago to $2\frac{1}{2}$ cents was found not to have been justified in *Crushed Stone from Wisconsin Points*, 37 I. C. C., 593.

Defendant did not specifically admit the discrimination alleged, but made its defense against the allegation that the present rates to Chicago and Chicago rate points from the outer zone points, except Burlington, are unreasonable. It did not deal specifically with the measure of the 4-cent rate, but introduced extensive exhibits of the cost of both the loaded and empty movements performed in handling sand and gravel to show that the actual cost of the service from the outer zone points was in excess of $1\frac{1}{2}$ cents. Whether or not these figures may be accepted as establishing the reasonableness of the 4-cent rate from Burlington, the fact remains that as a zone point Burlington is situated similarly to the points where complainant encounters competition, and as long as defendants elect to maintain the zones described and to carry $1\frac{1}{2}$ -cent rates from other points in the outer zone with which complainant competes, they can not maintain a higher rate from Burlington.

We find it unnecessary to determine whether the rates from the outer zone are on the whole reasonable or unreasonable because we find that it is and for the future will be unduly prejudicial for the Milwaukee to maintain a rate on sand and gravel in carloads from Burlington to Chicago and Chicago rate points in excess of the rate which it contemporaneously maintains or may maintain from Beloit, Janesville, Waukesha, Fontana, and other points which it serves in the outer zone.

An order will be entered accordingly.

No. 7593.
SWIFT & COMPANY
v.
SOUTHERN RAILWAY COMPANY ET AL.

Submitted August 19, 1915. Decided June 5, 1916.

Claim for reparation not presented formally until more than two years after it accrued and more than six months after notice to the claimant that it could not be adjusted pursuant to informal presentation of it, held to have been abandoned.

R. D. Rynder for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in operating a cottonseed oil refinery at Charlotte, N. C. By complaint, filed December 16, 1914, it alleges that the rates charged by defendants during the period from March 29, 1910, to May 2, 1910, for the transportation of eight carloads of crude cottonseed oil from Glenn Springs, Lowndesville, Fountain Inn, and McCormick, S. C., to Boston, Mass., refined in transit at Charlotte, were unreasonable and unjustly discriminatory. Reparation is asked.

The claim was presented to the Commission informally by the Southern Railway Company on January 22, 1912. It developed that it could not be adjusted informally, and the Southern Railway Company and complainant were so notified on June 15, 1914. Complainant failed to avail itself of its right to file a formal complaint, of which it was reminded in the notice of June 15, 1914, until December 16, 1914, more than six months later.

We find that complainant failed to file its formal complaint within two years after its claim accrued or within a reasonable time after notice that the claim was of such a nature that it could not be determined informally, and that the claim must therefore be regarded as having been abandoned. *Rule III of Rules of Practice; Dillon Coal & Transfer Co. v. O. S. L. R. R. Co., 28 I. C. C., 91.*

The complaint will be dismissed.

INVESTIGATION AND SUSPENSION DOCKET No. 785.
CEMENT TO TEXAS POINTS.

Submitted April 21, 1916. Decided June 13, 1916.

Respondent, the Kansas City, Mexico & Orient Railway of Texas, in connection with the St. Louis & San Francisco Railroad, participated in an 18½-cent rate on portland cement from Ada, Okla., to the first three points on its line in Texas. It also participated in a 22½-cent rate to the same points from Harry's and Eagle Ford, Tex., in connection with the Texas & Pacific and Fort Worth & Denver City railways, the distance from the latter points being slightly less than from Ada. Moved by an attack threatened upon its intrastate rates unless the interstate rates from Ada were increased, and failing to obtain the assent of the St. Louis & San Francisco Railroad to such increases, the Kansas City, Mexico & Orient Railway of Texas directed the cancellation of rates on cement from Ada to all points on its line in Texas. Upon inquiry into the reasonableness of the proposed cancellation and of certain substitute rates suggested at the hearing, *Held*:

- 1. That no evidence has been introduced tending to show that the proposed cancellation or the suggested substitute rates would be just or reasonable.**
- 2. That respondent's apprehension of reductions in its intrastate rates constitutes no justification for canceling or increasing interstate rates when the propriety of the resulting increased rates is not established.**

***J. T. Lane, E. J. Naylor, and E. H. Shaufler* for Kansas City, Mexico & Orient Railway Company of Texas.**

***J. T. Lane* for Kansas City, Mexico & Orient Railroad Company.**

***I. McNair* for St. Louis & San Francisco Railroad Company and its receiver.**

***Will H. Hart* for Oklahoma Portland Cement Company.**

***G. S. Maxwell* for Texas Portland Cement Company and Trinity Portland Cement Company.**

REPORT OF THE COMMISSION.

DANIELS, Commissioner:

By schedules contained in supplements 36, 37, and 38 to agent Leland's tariff I. C. C. 1048, filed to become effective February 1 and March 3, 1916, it was proposed to cancel joint commodity rates on portland cement in carloads from Ada, Okla., when forwarded via the St. Louis & San Francisco Railroad to points on the Kansas City, Mexico & Orient Railway of Texas. Upon protest of a manufacturer at Ada, the operation of the schedules was suspended, first until May 31, 1916, and by subsequent orders until November 30, 1916.

Ada is situated in the southeastern part of Oklahoma upon the St. Louis & San Francisco Railroad, hereinafter referred to as the Frisco, the Atchison, Topeka & Santa Fe Railway, hereinafter referred to as the Santa Fe, and the Missouri, Kansas & Texas Railway. Rates are stated in cents per 100 pounds.

The points to which the rates proposed to be canceled apply are all in the state of Texas. While some of them are reached by other lines, most of them are points local to the Kansas City, Mexico & Orient Railway of Texas, which connects with the Kansas City, Mexico & Orient Railroad at the Texas-Oklahoma state line at the Red River and extends in a southerly direction through Chillicothe, Sweetwater, and San Angelo, thence westwardly to Alpine, Tex. The last-named carriers constitute one system known as the Orient lines.

To the first three stations in Texas on the Orient lines south of the Red River the present carload rate on portland cement from Ada, in effect since December, 1909, is 18½ cents, subject to a minimum weight of 38,000 pounds. These stations are, in geographical order, Round Timber (Round Timber ranch), Odell, and Chillicothe. To all points south of Chillicothe, to and including San Angelo, there is, and for several years has been, a blanket rate of 25 cents. To points westwardly of San Angelo through rates are made by the addition of differentials to the 25-cent blanket rate. The rates mentioned apply via the Frisco through Sapulpa to Altus, Okla., thence via the Orient lines. To Chillicothe, situated also on the Fort Worth & Denver City Railway, the 18½-cent rate applies via other routes, namely, those of the Santa Fe and its connections; also those of the Frisco and of the Missouri, Kansas & Texas railways, each in connection with the Fort Worth & Denver City as the delivering carrier. The commodity rates on cement to points on the Orient lines south of Chillicothe also apply through the various junction points with other lines.

The suspended schedules propose to cancel all carload commodity rates on cement from Ada to points on the Orient lines in Texas. If the cancellation proposed should become effective the result would be to eliminate the Orient lines as a delivering carrier at Chillicothe, and to withdraw the present commodity rates on cement to all local points, leaving only the class C mileage rates to apply in lieu thereof. The following comparison shows the increases which would result from the proposed cancellation.

Rates, in cents per 100 pounds, on portland cement from Ada, Okla., to points on the Kansas City, Mexico & Orient Railway of Texas.

To—	Short distance.	Present commodity rates.	Class C mileage rates.	Amount of increase.
Round Timber, Tex		18.5	34.0	15.5
Odell, Tex	219	18.5	34.0	15.5
Chillicothe, Tex	228	18.5	35.0	16.5
Medicine Mound, Tex	235	25.0	35.0	10.0
Foard City, Tex	249	25.0	35.0	11.0
Benjamin, Tex	280	25.0	37.0	12.0
Rochester, Tex	300	25.0	38.0	13.0
Longworth, Tex	357	25.0	41.0	16.0
Blackwell, Tex	400	25.0	42.0	17.0
San Angelo, Tex	448	25.0	43.0	18.0
Mertson, Tex	476	29.0	¹ 54.0	25.0
Rankin, Tex	551	37.0	¹ 60.0	23.0
Alpine, Tex	675	40.0	¹ 64.0	24.0

¹ Not on mileage basis but regular class plus arbitraries.

The Oklahoma Central Railway, operated formerly as an independent road, but now owned and operated as a branch of the Santa Fe, extends from Ada to Chickasha, Okla. This line to Chickasha, Frisco to Altus, and Orient lines beyond, constitute the shortest line of railroad from Ada to the destination points mentioned, the distance being 228 miles from Ada to Chillicothe. The Oklahoma Central was absorbed by the Santa Fe nearly two years ago. Prior to that time cement originating on the Frisco at Ada, destined to points on the Orient lines, was forwarded over the rails of the Oklahoma Central to Chickasha, thence via the Frisco to Altus, but under Frisco billing all the way, the latter carrier, as appears from the testimony, having had some kind of a trackage right over the Oklahoma Central. Since the merger the 18½-cent rate no longer applies via the last-mentioned route, but in its stead traffic originating on the Frisco is, as heretofore stated, hauled north over that line to Sapulpa, thence southwesterly to Altus. The distance via this route from Ada to Chillicothe is about 390 miles.

Chillicothe is in the so-called Fort Worth-Dallas group with respect to rates from Oklahoma and Kansas gas-belt producing points. This group extends westerly to and includes Quanah, Tex. The rate from Ada is 7½ cents under the rate from Kansas gas-belt points. West of the Fort Worth-Dallas group lies the panhandle district of Texas, to points in which Ada is practically on a parity with the Kansas gas-belt points. Below, or south of the Fort Worth-Dallas group, lies Texas common-point territory, to which the rate from Ada is 5 cents under the rate from the Kansas gas-belt points. From Dewey, Okla., the rate was formerly 5 cents over Ada, but is now 7½ cents over Ada, due to the fact that Dewey has recently been put on the same basis as the Kansas gas-belt points on traffic destined to the Fort Worth-Dallas group.

The manufacturer at Ada competes at points on the Orient lines in Texas with other producing plants at Harry's and Eagle Ford, Tex., which are situated on the Texas & Pacific Railway immediately west of Dallas, Tex.; and also with other cement-producing plants in Oklahoma and in the Kansas gas belt. There is a portland cement plant at El Paso, Tex., but the distance therefrom to Chillicothe is considerably in excess of 500 miles, and there is apparently no movement to the destinations in question.

A comparison of the present rates to Chillicothe from Ada and other producing and competing points is shown in the following table. The distances, concerning which there is practically no dispute, are taken from the protestant's exhibits:

Rates on portland cement to Chillicothe, Tex.

From—	Dis- tance.	Rate per 100 pounds.	Route.
	<i>Miles.</i>	<i>Cents.</i>	
Ada, Okla.....	229	18.5	Santa Fe to Chickasha; Rock Island to Lone Wolf, thence Orient.
Do.....	390	18.5	Frisco through Sapulpa to Altus, thence Orient.
Iola, Kans.....	407	26.0	Mo. Pac. to Wichita, thence Orient.
Dewey, Okla....	328	26.0	M., K. & T. to Oklahoma City; Frisco to Altus, thence Orient.
Harry's, Tex....	207	22.5	T. & P. to Fort Worth, thence Ft. W. & D. C.
Do.....	374	22.5	T. & P. to Sweetwater, thence Orient.
Eagle Ford, Tex.	205	22.5	T. & P. to Fort Worth, thence Ft. W. & D. C.
Do.....	372	22.5	T. & P. to Sweetwater, thence Orient.
El Paso, Tex....	553	23.0	Do.
Galveston, Tex.	484	25.0	H. & T. C. to Fort Worth, thence Ft. W. & D. C.

The record shows that only one car of cement moved via the Frisco from Ada to Chillicothe during the years 1913, 1914, and 1915, and that none moved to Odell or Round Timber. During the same period there moved, even under the higher rates of 22½ cents from Harry's, one car to Chillicothe and three cars to Odell. There appears to be a substantial movement from Ada to points south of Chillicothe, although the major portion is not via the Frisco route. The traffic from Harry's and Eagle Ford, according to the testimony, ordinarily moves via the direct route of the Texas & Pacific and Fort Worth & Denver City. Only two carloads appear to have moved via the circuitous route through Sweetwater during the years 1913 to 1915, inclusive. The record justifies the assumption that the most substantial competition which the Ada manufacturer meets at Chillicothe is that from Harry's and Eagle Ford, with the results in favor of the latter, notwithstanding the difference in rates.

The rates from Ada have, since their establishment, been subject to a 38,000-pound minimum. The minimum under the distance rates from Harry's and Eagle Ford has, according to the testimony, been 24,000 pounds, until March 10, 1916, on which date it was increased to 34,000 pounds. The difference in minimum, protestant

asserts, has operated to its disadvantage, since the cement tends to become indurated and dealers prefer not to carry an excess stock. This may possibly explain the fact that to Chillicothe and Odell, notwithstanding a 4-cent higher rate, Harry's and Eagle Ford shipped four cars during the years 1913, 1914, and 1915, while Ada shipped but one.

The Orient lines are willing to continue the present rates to points south of Chillicothe. They are willing also to establish and participate in a 22½-cent rate to Chillicothe, Odell, and Round Timber, either via the route over which the present rate of 18½ cents is sought to be canceled or via the route of the Santa Fe and Rock Island railways through Chickasha to Lone Wolf.

The Frisco maintains a rate of 18½ cents from Ada for single-line hauls of 234 miles to Vernon, and Quanah, Tex. The 18½-cent rate from Ada to Chillicothe yields 9.5 mills per ton-mile, or 18 cents per car-mile for the long haul via the Frisco and Orient lines through Sapulpa and Altus. If the rate were applicable via the 228-mile route of the Santa Fe to Chickasha, Frisco to Altus and Orient lines beyond, it would yield 16.2 mills per ton-mile, or 31 cents per car-mile; a rate of 22½ cents would yield approximately 20 per cent more. The per car-mile earnings are in each instance computed on the minimum of 38,000 pounds.

The 22½-cent rate from Harry's and Eagle Ford is a distance rate prescribed by the Texas Railroad Commission. It applies via the direct route of the Texas & Pacific to Fort Worth, thence Fort Worth & Denver City and also via the circuitous route of the Texas & Pacific and Orient lines through Sweetwater.

It is in evidence that the respondents, Orient lines, did not at first intend, and perhaps have at no time desired, to cancel the through routes and joint rates via the Frisco from Ada. The first action affecting these rates was taken upon suggestions of their connection, the Texas & Pacific Railway, the incentive for which appears to have been a communication from the shippers at Harry's and Eagle Ford addressed to the Texas & Pacific complaining of the fact that the Orient lines were participating in an 18½-cent rate from Ada to Odell and Chillicothe, while they were, in connection with the Texas & Pacific, and at the same time, participating in a 22½-cent rate to the same points from Harry's and Eagle Ford, the short-line distance from the latter points being less than from Ada, as appears from the foregoing table.

The communication referred to was coupled with a plain intimation that unless the rates from Ada should be promptly increased to 25 cents, the Texas common-point basis, the power of the Texas Railroad Commission to establish "emergency" rates from Harry's

and Eagle Ford would be invoked. Earnest objection on technical grounds was made at the hearing to the introduction in evidence by protestant's witness of copies of correspondence showing that the suggestion for the increase of the rate from Ada emanated from the Texas shippers. As a matter of fact, the witness for the Orient lines did not ascribe the suggestion for an increase in rates from Ada to the Texas shippers, but treated it as one originating with the Texas & Pacific Railway. Whatever the original source of the suggestion may have been, there seems to be no doubt that pressure was exerted upon the Orient lines to have the rates from Ada brought up to a 25-cent basis and that the Orient lines, moved by the threatened attack upon their intrastate rates, sought to have the increase made from Ada, but were unable to secure the consent of the Frisco either to a 25-cent rate or to a 22½-cent rate, which, as a compromise, the Orient lines later sought to have established.

The attitude of the Frisco in respect to the rates under consideration and its apparent objection to any increase therein are not disclosed by the record. Failing in their efforts to obtain the concurrence of the Frisco, the Orient lines, in order to preserve the intrastate rates, determined to cancel the joint rates from Ada to Round Timber, Odell, and Chillicothe. Since the cancellation of these rates alone would have left higher mileage rates to apply in lieu thereof, which would have been greater than the commodity rates to points south of Chillicothe, it became necessary, respondent's witness testified, to also cancel the commodity rates to points south of Chillicothe in order to avoid fourth section violations, although, as a matter of fact, there seems not to have been then, nor does there seem to be now, any complaint against them. Why such drastic action should have been taken as the cancellation of through commodity rates on cement via all routes to all undisputed points on the Orient lines south of Chillicothe when only the route via the Frisco to Chillicothe and the two stations north thereof was involved, is an extraordinary proceeding not explained upon the record.

The respondents, Orient lines, which assumed the burden of the defense, have not brought to our attention any evidence tending to show that the rates proposed to be canceled are unreasonably low or non-compensatory; nor have they adduced any substantial evidence to show that the proposed substitute rate of 22½ cents to Chillicothe, Odell, and Round Timber would be reasonable *per se* or relatively, except by comparison with the rate from Harry's and Eagle Ford. They merely assert that it would be fair to both the Ada and the Texas shippers. Obviously we can make no finding that the proposed rate from Ada to the three points mentioned would be reason-

able merely because it does not exceed an intrastate distance rate for approximately the same distance.

The controlling reason, admittedly, for the action which gave rise to this proceeding was the fear of the Orient lines that the Texas commission might be induced to adopt retaliatory measures in the form of prescribing "emergency or penalty rates" for intrastate traffic unless the rates from Ada were increased or withdrawn. We find in this expressed apprehension of respondents no justification for the proposed cancellation of all rates on cement from Ada or even of the substitute proposition to establish a 22½-cent rate to Chillicothe, Odell, and Round Timber, especially since the latter is unsupported by any evidence that it is reasonable *per se* or relatively. *Oklahoma Portland Cement Co. v. M., K. & T. Ry. Co.*, 27 I. C. C., 101, 104. The respondents will be required to cancel the schedules under suspension, and orders will be issued accordingly.

40 I. C. C.

No. 6964.

CHICAGO WOOL COMPANY ET AL.

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY
COMPANY ET AL.

Submitted January 5, 1915. Decided June 12, 1916.

Upon complaint that the rates in effect on wool, scoured, washed, combed, or brushed, and wool combings and wool noils, from Chicago, Ill., to points in Wisconsin, Minnesota, and Iowa, which generally are any-quantity rates governed by the western classification, are unreasonable and unjustly discriminatory; *Held*, That the commodities in question should be given lower rates and ratings when in carloads than when in less than carloads, and the carriers will be expected to establish promptly the carload ratings proposed by them.

O. M. Rogers for complainants.

R. C. Fyfe and *W. E. Prendergast* for defendants.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

The complainants, dealers in and scourers of wool at Chicago, Ill., and shippers and manufacturers of woolen goods at Sheboygan Falls, Wis., and Faribault, Minn., allege that the rates on wool, scoured, washed, combed, or brushed, and wool combings and wool noils, from Chicago to points in Wisconsin, Minnesota, and Iowa are unreasonable and unjustly discriminatory. Carload rates, where none now exist, are prayed for, based on a minimum of 10,000 pounds for a standard 36-foot car, subject to rule 6-B of the western classification. Reparation is asked.

In the western classification cleansed wool is described as wool, scoured, washed, combed, or brushed, and wool combings and wool noils; and is rated double first class when in bags and one and one-half times first class when in compressed bales. These are any-quantity ratings and except in a few instances shipments of scoured wool from Chicago to points in Wisconsin, Minnesota, and Iowa move on these class rates, governed by the western classification.

The complainants show the ratings on scoured wool in the official and southern classifications and contend that the ratings in the western classification are unreasonable. They also show the any-quantity

rates from Chicago and the carload and less-than-carload rates from points in central freight association territory and from Atlantic coast points and contend that the present adjustment subjects them to undue prejudice and disadvantage. In the official classification wool and wool noils (wool combings), in bags or bales, are rated first class, less than carloads, and second class, carloads, minimum 10,000 pounds, subject to rule 27.

The only witness on behalf of the defendants was the chairman of the Western Classification Committee, and the defense was wholly as to the classification of scoured wool, the witness in question not being qualified as familiar with the detail of the rate adjustment. The defendants contend that the present ratings, applied to less-than-carload shipments, are reasonable, and submit that reasonable ratings on scoured wool in carloads would be first class, minimum 10,000 pounds, when in sacks, and second class, minimum 16,000 pounds, when in machine compressed bales; both minima to be subject to rule 6-B.

The complainants testify that they meet competition from dealers at Fort Wayne, Ind., Detroit, Mich., Cleveland and Cincinnati, Ohio, and other points in central freight association territory, and at Boston, Mass., and other Atlantic ports, from which scoured wool moves to points in Wisconsin, Minnesota, and Iowa either on through class rates subject to the official classification or on combination class rates based on the Mississippi River or Minneapolis or St. Paul, Minn.

Rates are stated in cents per 100 pounds.

From Chicago the first and second class rates, respectively, are 65 and 55 cents to Duluth, Minn., and 60 and 50 cents to Minneapolis; consequently the rates on scoured wool in bales and in bags, respectively, are 97½ cents and \$1.30 to the former, and 90 cents and \$1.20 to the latter. From the east the same rates apply on wool, in bales or bags, to Duluth and Minneapolis: 68 cents carloads, 80.3 cents less than carloads, from Fort Wayne; 77 cents carloads, 93.3 cents less than carloads, from Cincinnati; 72 cents carloads, 85.3 cents less than carloads, from Detroit; and \$1.023 cents carloads, \$1.188 less than carloads, from Boston. The rates stated from Boston are applicable via the standard lines.

Taking Des Moines as representative of the interior Iowa points, the first and second class rates are 60 and 48 cents, respectively, from Chicago, and the proportional rates from the Mississippi River, applicable on traffic from points east of the Indiana-Illinois state line, are 34.8 and 27.8 cents, respectively. The present rates from eastern points to interior Iowa destinations are made by adding to

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the first-class rates to the river double or one and one-half times 34.8 cents, dependent upon the method of packing, and under the proposed carload ratings these basing rates from the river would be reduced to the first and second class proportional rates stated. The present and the proposed rates from Chicago, and the present and proposed combination rates to Des Moines from the three central freight association points above named are as follows:

To Des Moines from—	Carloads.				Less than carloads.	
	In bales.		In bags.		In bales.	In bags.
	Present.	Proposed.	Present.	Proposed.		
Chicago.....	.....	48.0	.....	60.0	90.0	120.0
Fort Wayne.....	90.5	66.1	107.9	73.1	97.4	114.8
Cincinnati.....	88.4	64.0	105.8	71.0	95.3	112.7
Detroit.....	93.7	69.3	111.1	76.3	100.5	117.9

It will be seen from the above that while the proposed ratings would change the relationship between carload rates from Chicago and from points east thereof to destinations in Wisconsin, Minnesota, and Iowa, they would result in no change whatsoever in the less-than-carload rates.

In *In re Transportation of Wool, Hides, and Pelts*, 23 I. C. C., 151, and 25 I. C. C., 185, the Commission reported upon an investigation into the reasonableness of the rates on wool in the grease from points in western trunk line territory to eastern markets. In the first report it prescribed ratings in the western classification of fourth class, carloads, and second class, less than carloads, on wool in the grease, without regard to the method of packing; and also prescribed commodity rates, the rates on wool in bags being fixed at 115 per cent of the rates on that commodity when in bales. In the supplemental report rates on scoured wool from Albuquerque, N. Mex., to the east were prescribed, the existing rates being reduced the same amounts in cents per 100 pounds as the rates on wool in the grease had been reduced in the first report, and it being said that—

We do not feel that we have before us the necessary information from which to arrive at any conclusion as to what should be the fair relation between scoured wool and wool in the grease.

In *Traugott Schmidt & Sons v. M. C. R. R. Co.*, 23 I. C. C., 684, the then existing adjustment of rates to eastern cities was held to be unduly prejudicial to Detroit, Mich., and unduly preferential of Chicago and St. Louis, and we took occasion to call attention to the fact that the conditions of the transportation of wool differed in the east from those in the west.

In *Knight Woolen Mills v. C. & N. W. Ry. Co.*, 32 I. C. C., 490, rates on scoured wool in compressed bales from Chicago to Provo and other Utah common points, carload and less than carload, were considered. No relationship between rates on wool in the grease and scoured wool was prescribed, but specific rates on the latter were fixed between the points named of \$2.25, minimum 13,500 pounds, subject to rule 6-B, and \$3 less than carloads. The defendants had proposed at the hearing a carload rate of \$2.24, and the rates prescribed were, respectively, 8 per cent less, and over 20 per cent more than the first-class rate from Chicago to the Utah common points.

The present record does not afford a satisfactory basis upon which to consider either the reasonableness of the ratings on scoured wool in the western classification or the reasonableness or discriminatory character of the rates applicable from Chicago to points in Wisconsin, Minnesota, or Iowa. We are of opinion, however, and find, that wool, scoured, washed, combed, or brushed, and wool combings and wool noils, in carloads, should be given lower ratings in the western classification than those applicable to the same commodities in less than carloads, and the carriers will be expected to establish within 60 days the ratings proposed by them, which, as above stated, will change the relationship between the carload but not the less-than-carload rates from Chicago and from eastern points to destinations in the three states named. We can not, upon this record, express any opinion as to the reasonableness of the resulting rates or minima, which, however, will be subject to investigation upon formal complaint. The case will be held open 60 days following the service of this report.

40 I. C. C.

No. 7113.¹

ALBERGER PUMP & CONDENSER COMPANY

v.

ALLEGHENY VALLEY RAILWAY COMPANY ET AL.

Submitted March 16, 1915. Decided June 5, 1916.

Rates charged for the transportation of iron valves, with motors attached, in carloads, from Pittsburgh, Pa., to Bremerton, Wash., and in less than carloads from Pittsburgh to San Francisco, Cal., not shown to have been unreasonable or unduly prejudicial, but weight charged for on the carload shipments found to have exceeded the correct scale weight and reparation awarded.

John B. Daish and J. Raymond Hoover for Alberger Pump & Condenser Company.

Frank S. Delp for Pittsburgh Valve, Foundry & Construction Company.

Henry A. Scandrett and L. T. Wilcox for Atchison, Topeka & Santa Fe Railway Company; Union Pacific Railroad Company; Oregon Short Line Railroad Company; Oregon-Washington Railroad & Navigation Company; Chicago, Burlington & Quincy Railroad Company; and Southern Pacific Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant in No. 7113 is a corporation engaged in the manufacture and sale of machinery, with its principal office at New York, N. Y. It is the successor in interest to the Alberger Pump Company, a corporation formerly engaged in the manufacture of pumping machinery. The complainant in No. 7152 is a corporation engaged in the manufacture and sale of valves and pipe fittings, with its principal place of business at Pittsburgh, Pa. The complaints were filed July 20, 1914, and July 25, 1914. The allegations are that the rate charged by defendants for the transportation of certain carload shipments of iron valves with motors attached from Pittsburgh to Bremerton, Wash., during the period from April 1, 1912, to April 9, 1912, was unreasonable and unjustly discrimi-

¹ The proceeding also embraces complaint in No. 7152, Pittsburgh Valve, Foundry & Construction Company v. Pennsylvania Company et al.

natory, in violation of sections 1, 2, and 3 of the act, and that the rate charged for the transportation of a less-than-carload shipment of iron valves with motors attached from Pittsburgh to San Francisco, Cal., July 19, 1912, was unjust and unreasonable. The weight upon which charges were assessed in No. 7113 also is challenged. Reparation is asked and the establishment of reasonable rates for the future. The claims were presented to the Commission informally within two years after the causes of action accrued.

The complaint in No. 7113 relates to six carload shipments of cast-iron valves with motors attached, which were moved from Pittsburgh by the Allegheny Valley Railway, the Pennsylvania Company, the Atchison, Topeka & Santa Fe Railway, the Union Pacific Railroad, the Oregon Short Line Railroad, and the Oregon-Washington Railroad & Navigation Company to Seattle, Wash., and by the Puget Sound Navigation Company thence to Bremerton. The shipments were described in the bill of lading as "cast-iron valves, parts, stems, and couplings." They were inspected while in transit by a representative of the transcontinental freight bureau and the description was changed to machinery, n. o. s., crated. Freight charges were collected in the sum of \$3,489.98 on 225,160 pounds at a combination rate of \$1.55 per 100 pounds, composed of commodity rate of \$1.50 per 100 pounds to Seattle and an arbitrary of 5 cents per 100 pounds beyond.

The valves were manufactured in different sizes and were designed to connect with pipes ranging from 15 inches to 54 inches in diameter which were to be installed in a dry dock at destination. They differed from ordinary valves in size and means of operation. A motor was fastened to the body of each valve by four bolts and was connected with the stem by four cut-gear wheels. A clutch permitted the use of a handwheel or the motor. The valves weighed from 875 pounds to 16,980 pounds each. The largest was valued at about \$2,000, including a value of about \$400 on the motor. The largest motor weighed about 400 pounds.

Western classification No. 50, I. C. C. No. 8, in effect at the time, provided as follows:

	L. C. L.	C. L.
Machinery and machines:		
Machinery n. o. s.:		
Completely k. d. and boxed.....	2	} "A" min. wt. 24,000 pounds.
In frame or set up.....	1½	
K. d., in pieces.....	1	

with the further related provision that "dynamos and motors forming an integral part of machinery may take the same rating as the machine of which they form a part." Transcontinental freight
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bureau tariff, I. C. C., 928, governed by the western classification, provided a carload commodity rate of \$1.50 per 100 pounds, minimum 24,000 pounds, from Pittsburgh to Seattle on machinery and machines rated class A in the western classification. Iron valves were provided for by specific reference under machinery and machines in that tariff. The same tariff also provided a commodity rate of 70 cents per 100 pounds, minimum 30,000 pounds, from Pittsburgh to Seattle, applicable on the following articles:

Pipe fittings and connections, including cocks or valves, wrought, cast, or malleable, or iron body cocks, valves, and pipe connections (the bodies or principal parts of which are iron, but having brass pieces or parts), screwed, flanged, or with hub ends; also wrought-iron pipe, bands, with or without wrought or cast iron flanges.

Complainant contends that the component of the rate charged to Seattle was unreasonable, unduly prejudicial, and unjustly discriminatory. The component beyond Seattle is not attacked. The real issue and the issues to which practically all of the testimony was addressed are: (1) The propriety of defendants' action in rating the shipments as machinery, n. o. s., at a rate of \$1.50 per 100 pounds, instead of rating them as valves, under pipe fittings and connections, at a rate of 70 cents per 100 pounds; and (2) the accuracy of the weights upon which the charges were assessed. Complainant insists that a motor operated valve is not a machine within the meaning of the classification and the tariff; that attaching a motor to a valve does not change its transportation characteristics to an extent justifying a higher rate; and that the tariff was ambiguous in that it named conflicting rates on valves.

The 70-cent rate in the transcontinental tariff cited applied to valves such as are ordinarily shipped with pipe fittings and connections. It did not apply to valves equipped with mechanical devices used for their operation. Valves with motors attached were provided for in the classification as machinery, n. o. s., class A, and in the tariff under the item relative to machinery and machines, for which the rate applicable from Pittsburgh to Seattle was \$1.50 per 100 pounds, which was the rate charged. No satisfactory evidence was adduced to support the allegations of undue prejudice and unjust discrimination.

A weight of 215,456 pounds is said to have been the correct weight of the six shipments in No. 7113. The complainant's shipping clerk testified that he was familiar with the articles included in the shipments, that he weighed them before they were loaded, and that the scales used were accurate. The material evidence which he offered was given from memoranda prepared when the shipments were weighed. Defendants replied that they also weighed the shipments at Pittsburgh, Corwith, Ill., and Seattle, and that the net

weights shown at those points were 227,100, 226,500 pounds, and 225,800 pounds, respectively. The shipments moved to destination in the original cars, and each shipment weighed more than the minimum required for the carload rate. Defendants' only witness had no personal knowledge of the weights and the testimony offered was too general and indefinite to rebut the presumption of accuracy attaching to complainant's scale weights.

We find that the rate assailed in No. 7113 is not shown to have been unreasonable, unduly prejudicial, or unjustly discriminatory, but that the charges collected were calculated upon an erroneous weight; that the shipments were made and charged for as described; that complainant paid and bore the charges and has been damaged to the extent of the difference between the charges collected and the charges which would have accrued at a rate of \$1.55 per 100 pounds from Pittsburgh to Bremerton on 215,456 pounds; and that complainant, Alberger Pump & Condenser Company, is entitled to reparation in the sum of \$150.41, with interest from May 3, 1912.

The complaint in No. 7152 relates to a less-than-carload shipment from Pittsburgh to San Francisco of two 20-inch gate valves with motors attached, crated. Charges were collected in the sum of \$160.89 on 5,190 pounds, at the second-class rate of \$3.10 per 100 pounds, applicable to machinery n. o. s., completely knocked down and boxed. Complainant contends that the rate charged was unreasonable to the extent that it exceeded the less-than-carload commodity rate of \$1.50 per 100 pounds applicable to iron valves, included under pipe fittings and connections in the transcontinental tariff already cited. But this rate was not applicable to iron valves with motors attached and except for the fact that this claim involves a class rate on a less-than-carload shipment of machinery, set up, the issues are identical with those presented in No. 7113. The testimony introduced relative to that complaint also applies to this.

The western classification rated machinery, n. o. s., set up, one and one-half times first class, and that rating was legally applicable. The first-class rate was \$3.60 per 100 pounds. Only \$160.89 was collected, so that the shipment was undercharged in the sum of \$119.37. The record affords no basis for a finding relative to the intrinsic reasonableness of the rate legally applicable. We find that the rate assailed is not shown to have been unreasonable, and the complaint will be dismissed.

An appropriate order will be entered.

No. 7288.
GRASSELLI CHEMICAL COMPANY
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY.

Submitted February 23, 1915. Decided June 13, 1916.

Rate charged for the transportation of a carload of sulphuric acid from Grasselli, Ala., to Cincinnati, Ohio, not found to have been unduly prejudicial. Complaint dismissed.

W. T. Cashman for complainant.

William Burger for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of sulphuric acid and other chemicals, with its principal place of business at Cleveland, Ohio, and a plant at Grasselli, Ala. By complaint, filed September 14, 1914, as amended, it alleges that the rate charged by defendant for the transportation of a carload of sulphuric acid from Grasselli to Cincinnati, Ohio, April 20, 1914, was unjustly discriminatory. Reparation is asked and the establishment of a reasonable rate for the future.

The shipment weighed 46,900 pounds and moved in a tank car over defendant's line from Grasselli to Cincinnati. Charges were collected in the sum of \$92.63, at a commodity rate of \$3.95 per net ton.

Grasselli is situated on the Louisville & Nashville and the Alabama Great Southern railroads, 7 miles from Birmingham, Ala. The short route to Cincinnati is over the Alabama Great Southern Railroad, in connection with the Cincinnati, New Orleans & Texas Pacific Railway, 487 miles. The distance over the Louisville & Nashville Railroad is 511 miles. The complaint is based solely on a comparison of the rate charged with a rate of \$2 per net ton to Cincinnati from Copperhill, Tenn., a local station on the Louisville & Nashville Railroad, 397 miles south of Cincinnati, complainant contending that the rate charged was unjustly discriminatory to the extent that it exceeded \$2.52 per net ton.

Copperhill is not intermediate to Cincinnati from Grasselli over defendant's line. The rate charged yielded 7.7 mills per ton-mile; the \$2 rate from Copperhill, 5 mills. The \$2.52 rate suggested is

arrived at by applying the ton-mile earnings of the \$2 rate from Copperhill to complainant's estimated distance of 504 miles from Grasselli to Cincinnati.

Complainant also operates sulphuric acid plants at Grasselli, Ind., Canton and Cleveland, Ohio, and Lockland, Ohio, a suburb of Cincinnati. Under normal conditions these plants supply complainant's needs at Cincinnati. Various other sulphuric acid plants are located in central freight association territory at points considerably less distant from Cincinnati than Grasselli, Ala. The shipment involved was moved for the purpose of this case, and was the only shipment moved between these points since 1911. The record indicates that complainant's Grasselli, Ala., plant is small and that about 7,000 tons of sulphuric acid were shipped from it in 1914. The output of the plant is usually marketed in the south, southeast, and southwest. There is no showing that the shipment in issue competed at Cincinnati with sulphuric acid shipped from Copperhill. In 1914 complainant was compelled to buy 3,000 tons of sulphuric acid at Copperhill to meet a shortage which occurred for the first time in that year. The conditions under which the purchase was made are not shown in detail, and it does not appear that the Grasselli, Ala., plant could have supplied complainant's needs if the rate sought had been in effect. The rate sought is evidently desired only for the movement of shipments made under extraordinary conditions.

Defendants assert that about 175,000 tons of sulphuric acid are produced annually at Copperhill and vicinity; that producers at that point are in active competition in central freight association territory with complainant and the other producers operating plants there; that Copperhill is more advantageously located with respect to the Cincinnati market than Grasselli, Ala., and that the circumstances and conditions surrounding the transportation of sulphuric acid from Copperhill to Cincinnati are substantially dissimilar to those surrounding the transportation of similar traffic from Grasselli, Ala., to Cincinnati.

We find that the rate assailed is not shown to have been unduly prejudicial, and an order will be entered dismissing the complaint.

40 I. C. C.

No. 7965.

CONNOR LUMBER & LAND COMPANY

v.

AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY
ET AL.

Submitted November 26, 1915. Decided June 13, 1916.

Rates on lumber in carloads from Wisconsin points along the shore of Green Bay to central freight association territory and other destinations found to be dominated by central freight association lines through their car ferry routes across Lake Michigan, and therefore, *Held*:

1. That the lower rates from Green Bay, Oconto, Peshtigo, and Marinette, Wis., than from Laona, Wis., a point at least 60 miles inland by rail, are not shown to be unduly prejudicial to complainant or Laona.
2. That Laona, as to shipments of lumber in carloads to the territory of destination, is included in the Wausau group, and that Wausau rates, as applied from Laona, are neither unjust nor unreasonable.

Felix J. Streyckmans and *Goggins & Brazeau* for complainant.

C. C. Wright and *R. H. Widdicombe* for Chicago & North Western Railway Company.

O. C. Bromley for Cincinnati Northern Railroad Company; Cleveland, Cincinnati, Chicago & St. Louis Railway Company; and other carriers.

REPORT OF THE COMMISSION.

HALL, *Commissioner*:

Connor Lumber & Land Company, the complainant, a Wisconsin corporation, manufactures lumber at Laona, Wis. By complaint, filed April 7, 1915, it alleges that all carload rates on lumber and other forest products from Laona to points in central freight association territory, and in the states of New York, Pennsylvania, West Virginia, and Kentucky, are unjust, unreasonable, and discriminatory. Upon the hearing its several contentions were resolved into the one that rates from Laona to the territory of destination should be little, if any, higher than the rates to that territory from Green Bay, Oconto, Peshtigo, and Marinette, Wis., and Menominee, Mich., known as "bay shore points."

Laona is on a branch line of the Chicago & North Western Railway Company, hereinafter termed the North Western, extending from Northern Junction, Wis., to Saunders, Mich., 55.4 miles from Northern Junction. The traffic over this branch is light and consists largely of forest products. Complainant's supply of logs is brought by railroad from territory within 20 or 30 miles of Laona. Its output is chiefly of hardwood lumber, flooring, ceiling, and shingles.

Its principal competitors operate at bay shore points on the North Western. For many years they and complainant have manufactured the same kind of product and sold it in the same markets. In recent years these competitors have also purchased some of their logs in the logging region from which complainant draws its supply.

The lumber-producing points of upper Michigan, Wisconsin, and Minnesota are for the most part embraced in 44 groups of origin, 18 of which are in Wisconsin. From all of these Wisconsin groups the rates to central freight association territory were originally constructed on the basis of the lowest available combination, whether made through Manitowoc, Wis., Milwaukee, Wis., or Chicago, Ill., and the rates so made were applied through all gateways. At present the through rates are invariably less than the combination of the intermediates. The Oshkosh group, just west of the bay shore mills, is the group nearest to central freight association territory; west of it is the Stiles Junction group; and next the Wausau group, with Laona in the northeastern corner.

Oshkosh is 62 miles from Manitowoc and Laona 126 miles. To central freight association territory the latter takes rates which, generally speaking, are an arbitrary of $2\frac{1}{2}$ cents per 100 pounds over the rates from Oshkosh. The groups begin beyond the influence of Green Bay and Lake Michigan, and the bay shore mills are not a part of any group. The Wisconsin group adjustment has been in effect for many years, certainly since 1909.

Complainant's mill is one of the most easterly in the Wausau group and the northernmost on the branch of the North Western which serves it. This branch lies nearer to the bay shore than the rails which serve the rest of the Wausau group. But at least two mills lie south of Laona on the same branch, and thus nearer by rail to the bay shore and Manitowoc. Using the latter as the radiating point, as it is for rate-making purposes, the Wausau group on the North Western appears to be fairly consistent and symmetrical. The following table compares the distances to Manitowoc, Milwaukee, and Chicago from the nearest and farthest points in the Wausau group which are served by various branch lines of the North Western:

From—	To Mani- towoc.	To Mil- waukee.	To Chi- cago.
<i>Nearest points:</i>	<i>Miles.</i>	<i>Miles.</i>	<i>Miles.</i>
Bancroft, Wis.....	148.1	140.9	225.9
Callon, Wis.....	121.9	172.5	257.5
Birnamwood, Wis.....	111.3	161.9	246.9
Breed, Wis.....	85.3	162.7	247.7
<i>Farthest points:</i>			
Marshfield, Wis.....	170.7	184.4	269.4
McMillan, Wis.....	165.3	189.8	274.8
Harrison, Wis.....	170.8	221.4	306.4
Laona, Wis.....	126.5	203.9	288.9

All these points take the same rate to central freight association territory. No group adjustment can effect exact justice in rate making, and the small disadvantages to one point or another incident to such adjustments do not constitute the undue prejudice made unlawful by section 3 of the act. *Southwestern Missouri Millers Club v. M., K. & T. Ry Co.*, 22 I. C. C., 422-424.

In *Connor Lumber & Land Co. v. C. & N. W. Ry. Co.*, Docket No. 3315, unreported, we dismissed a complaint alleging that the rates from Laona, then in the Rhinelander group, to points in Illinois and Iowa were unreasonable and unjustly discriminatory to the extent that they exceeded rates from points in the Wausau and Hermansville groups. Subsequently defendants extended the Wausau group to include Laona except as to shipments to Chicago. These take the Rhinelander group rates. Measured by the distances to all the gateways through which the rates from the Wausau group apply to the territory of destination, that group seems to be fairly and reasonably constructed, and fairly and reasonably to include Laona within its confines.

Comparisons of rates on lumber in carloads show that to destinations in Michigan the rates from Laona are usually 25 per cent, or more, in excess of those from bay shore points. The difference decreases with distance, as in the rates to Ohio, Indiana, and Illinois, but the advantage is still with the bay shore mills.

The following table shows the rates, in cents per 100 pounds, short-line distances, and ton-mile earnings from Laona to a few representative points as compared with those from Green Bay and other bay shore points to the same destinations:

To—	From Laona.			From Green Bay and other bay shore points.		
	Distance.	Rate.	Ton-mile earnings.	Average distance.	Rate.	Ton-mile earnings.
	Miles.	Cents.	Mills.	Miles.	Cents.	Mills.
Grand Rapids, Mich.....	290.31	15.9	11.0	219.2	10.5	9.6
Lansing, Mich.....	355.01	16.9	9.5	283.9	12.6	8.8
Galesburg, Ill.....	404.71	17.0	8.4	346.6	16.0	9.2
Danville, Ill.....	412.31	17.5	8.5	352.6	16.5	9.4
Indianapolis, Ind.....	471.91	18.5	7.8	412.2	16.3	7.9
Detroit, Mich.....	430.71	19.5	9.1	354.7	11.0	6.2
Toledo, Ohio.....	452.71	19.5	8.6	375.2	11.0	5.9
Vincennes, Ind.....	524.41	19.5	7.4	464.7	17.9	7.7
Cleveland, Ohio.....	559.71	20.6	7.4	471.7	15.8	6.7

Some six or eight years ago the conditions under which the complainant marketed its product in central freight association territory were apparently satisfactory. Since then conditions in the lumber industry have changed, and witnesses for complainant state that it can no longer compete successfully in Michigan with the bay shore

mills. Its difficulty is attributed to the rate adjustment. From complainant's evidence it appeared that for the last year or more preceding the hearing conditions in the lumber industry generally had been bad.

Car ferries are operated across Lake Michigan by the Ann Arbor Railroad from Menominee, Mich., Kewaunee, Wis., and Manitowoc; by the Pere Marquette Railroad from Manitowoc and Milwaukee; and by the Grand Trunk Railway system from Milwaukee.

If the North Western desires to participate in the traffic from Menominee, the most northerly of these ports, it must meet the rate of the Ann Arbor Railroad from that point to the east and when met this rate becomes the maximum for the other bay shore points from Green Bay north. This is true whether all of the bay shore mills are directly on the water, as defendants say, or whether some are several miles inland, as complainant contends.

It is clear from the record that the particular points said to be preferred owe their lower eastbound rates to their location upon or near the bay shore. These lower rates are controlled by the central freight association lines through their car-ferry routes, and are not initiated or controlled by the North Western. Laona is at least 60 miles by rail from Green Bay and hence has not the rate-compelling location of the bay shore mills.

No mills in the western portion of the Wausau group encounter the competition of bay shore mills in purchasing logs, and on behalf of complainant it is urged that this is entitled to weight in considering the lower rates from bay shore points on the manufactured product. In other words, the contention is that the bay shore mills, because of their lower rates on the manufactured product, can pay more for their logs, or, if they pay the same for logs, can afford to sell the lumber or other products cheaper than can complainant. But the record does not disclose the rates on logs to Laona and to the competing mills. Laona is within the encircling boundary of the common logging region, while the bay shore mills are distant 60 miles or more by rail; and, as was said in *Northbound Rates on Hardwood Lumber from Southwest*, 32 I. C. C., 521, 529, we are here dealing with a transportation problem as distinguished from an industrial problem, however frequent or intimate the points of contact. It is not the function of this Commission to equalize commercial conditions or neutralize geographical advantages by such adjustments as will enable a shipper to compete in markets otherwise closed to him; *Lindsay & Co. v. Northern Express Co.*, 33 I. C. C., 394, 396; especially under depressed market conditions, *Railroad Commissioners of Montana v. B., A. & P. Ry. Co.*, 31 I. C. C., 641, 644.

Some of complainant's evidence seems to attempt a showing of discrimination against Laona and in favor of more westerly Wisconsin and northern Minnesota points. In part, this showing relates to Laona's difficulty in shipping to the west, which is not in issue here, and in so far as relating to rates to the east it was not seriously pressed. These contentions were met by proof that the rates from the more westerly mills are constructed exactly as are those from Laona except as water competition may cause some reductions below the usual basis. It also appears that rates thus tempered to meet compelling influences have been adjusted to meet the requirements of this Commission under the fourth section.

Practically no evidence was offered in support of the charge that the rates from Laona to the east are unreasonable *per se*. That charge was really merged, in the course of the hearing, into the issue of discrimination. It was said that southern lumber moves into the territory of destination on preferred rates, but defendants show that from Jackson, Miss., as a central point, southern lumber pays much higher rates, while the application of the ton-mile revenue test indicates that Laona's rates are not out of line.

The rates under attack are not shown to be unreasonable or unduly prejudicial to complainant or Laona, and the complaint must be dismissed.

It is so ordered.

40 I. C. C.

No. 8196.
BYRD-MATTHEWS LUMBER COMPANY ET AL.
v.
GAINESVILLE & NORTHWESTERN RAILROAD
COMPANY ET AL.

Submitted January 16, 1916. Decided June 13, 1916.

Present adjustment of rates on lumber to Cincinnati, Ohio, and other Ohio River crossings from Helen, Ga., and from Murphy, N. C., and certain other points in North Carolina on the lines of the Southern Railway Company found unduly prejudicial to Helen, and a reasonable relationship prescribed.

John R. Walker for complainants.

R. Walton Moore and *Merrell P. Callaway* for Southern Railway Company; Cincinnati, New Orleans & Texas Pacific Railway Company; and Mobile & Ohio Railroad Company.

B. S. Barker for Gainesville & Northwestern Railroad Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

The complainants allege that the defendants' rates for the transportation of hardwood lumber in carloads from Helen, Ga., to certain Ohio River crossings and to points in the Buffalo-Pittsburgh territory are unreasonable and that the present adjustment of rates to those points of destination from Helen and from milling points in western North Carolina subjects them to undue prejudice and disadvantage and unduly prefers shippers from western North Carolina.

The Blue Ridge Mountains, extending in a southwesterly direction through North Carolina and into northern Georgia, are covered with extensive forests of hardwood timber. The Southern Railway has lines reaching both western North Carolina and northern Georgia, one of its main lines extending from Atlanta, Ga., through Spartanburg, S. C., to Alexandria, Va., and a branch line extending northeast from Murphy, a point in the southwest corner of North Carolina, to Asheville, N. C., from which point there are lines of the same carrier to the east and to the west. Between the lines described there is a range of mountains, on the southern slope

of which lie large tracts of timberland, of which 116,000 acres are owned by the complainants, the Byrd-Matthews Lumber Company and the William B. Morse Lumber Company, or by a subsidiary of the latter, the Blood Mountain Lumber Company, and on the northern slope of which lie the timber tracts of complainants' North Carolina competitors.

The only carriers other than the Southern Railway which serve the territory lying near the bases of these mountains are the Louisville & Nashville Railroad, a branch of which extends from its main line to Murphy, and certain short lines which extend north from the Atlanta-Spartanburg line of the Southern Railway, but not through the mountains to the Murphy branch of the same carrier. Helen, at which point the Byrd-Matthews Lumber Company has a large and modern sawmill, is near the base of the southern slope, and is served only by the Gainesville & Northwestern, a line 37 miles in length extending from Gainesville, Ga., a point on the Atlanta-Spartanburg line 54 miles northeast of Atlanta, to North Helen, 1 mile north of Helen. It was constructed in 1912 by the same interests which own the Byrd-Matthews Lumber Company, which latter did not commence shipping from Helen until 1914. Neither the other complainant nor its subsidiary have commenced the manufacture of lumber at or near Helen.

To Cincinnati, Ohio, which was selected at the hearing as a representative point of destination, the routes from Helen are through Atlanta, over either the Southern and its connections or a route composed of the Gainesville Midland from Gainesville to Athens, Ga., and the Seaboard Air Line Railway and connections beyond. The distance between the points in question via the Southern through to Chattanooga, Tenn., and the Cincinnati, New Orleans & Texas Pacific Railway beyond is 581 miles, but by using the Western & Atlantic Railroad from Atlanta to Chattanooga it is reduced to 565 miles. The other route referred to is substantially longer.

The competitors of complainants which are alleged to be unduly preferred ship from Murphy, and from Andrews and other intermediate points on the Murphy branch; also from Lake Toxaway, N. C., located at the terminus of the Hendersonville branch of the Southern, and other points in the same general territory. The Louisville & Nashville, which is not a party to this proceeding, has the short line from Murphy to Cincinnati, 441 miles. The short-line route between these points in connection with the Southern is 533 miles, via Jellico, Tenn., and the Louisville & Nashville, the route of the Southern through Knoxville to Harriman Junction,

Tenn., and the Cincinnati, New Orleans & Texas Pacific beyond being 563 miles. From Andrews and Lake Toxaway the distances to Cincinnati are 16 and 61 miles, respectively, less than those stated from Murphy via the Southern.

The present rates and those sought from Helen and the present rates from the three North Carolina points named to the Ohio River crossings are as follows:

To—	From Helen.		From Murphy.	From Andrews.	From Lake Toxaway.
	Present.	Sought.			
Cincinnati, Ohio.....	24	18	¹ 18	17	16
Louisville, Ky.....	23	18	18	17	16
Evansville, Ind.....	24	20	20	19	18

¹ 19 cents via the Louisville & Nashville Railroad.

Since the filing of the complaint the rate from Helen to Cincinnati and Evansville, applicable on traffic destined to those points locally, has been increased from 23 to 24 cents, the Commission having found in *Rates on Lumber from Southern Points*, 34 I. C. C., 652, that increases not exceeding 1 cent per 100 pounds in lumber rates from southeastern and Mississippi Valley territories to north bank Ohio River crossings were justified where such increases were necessary to effect a spread of 1 cent between opposite crossings. The Louisville & Nashville made corresponding increases from Murphy, but no change has been made by the Southern from its Murphy branch stations, it being stated that the proposed increases were deferred pending decision in the case referred to. The Commission has now under suspension, pending investigation, tariffs carrying similar increases in the proportional rates from southeastern and Mississippi Valley territories to the north bank crossings. In their brief the defendants state it to be their intention to increase their rates from points on the Murphy and Hendersonville branches and to make north bank crossings 1 cent higher than south bank crossings.

The timber on the north and south slopes of the range referred to is of the same character and quality and complainants testify that under the present adjustment of rates it is impossible successfully to compete with the North Carolina mills. The defendants seek to justify the difference in rates by a showing of substantial dissimilarity of transportation conditions.

When the Gainesville & Northwestern was completed, rates on lumber to the Ohio River crossings were made the same as those from Gainesville Midland Railroad stations, namely, 1 cent over the rates on lumber, including yellow pine, from a large portion of Georgia. In this connection it was testified by complainants, and not contro-

verted by defendants, that complainants meet no substantial competition on hardwood lumber from central and south Georgia points, and the contention is made that they are entitled to rates reasonably adjusted with relation to rates from the western North Carolina hardwood mills, without reference to the adjustment of rates on long-leaf yellow-pine lumber from the more southern sections of Georgia.

The defendants contend that the Louisville & Nashville fixes the maximum rate which they can charge from Murphy or from intermediate points on the Murphy branch. It should be noted, however, that while the Southern met the former rate of the Louisville & Nashville from Murphy to Cincinnati of 18 cents, it carried rates from Andrews, only 16 miles less distant, of 17 cents, and from Asheville, 124 miles less distant, and points on the Hendersonville branch of 16 cents.

The defendants also point to the fact that under the southeastern adjustment complainants receive advantages which their North Carolina competitors do not have, in that they have a proportional rate of 17 cents to Cairo, Ill., applicable on traffic to Chicago, Ill., St. Louis, Mo., and other central freight association points, whereas from the North Carolina mills through rates to the same points of destination are based on the local rates to Cairo. The establishment of proportional rates from Georgia points to Cairo, it appears, was due to the desire of the southeastern lines to enable the mills at those points manufacturing yellow-pine lumber to meet the competition of Mississippi Valley mills, the proportionals in question generally being the same as the local rates from Mississippi Valley points. The rate from Helen to Chicago is $27\frac{1}{2}$ cents, the same as from Andrews, 1 cent lower than from Murphy, and 1 cent higher than from Lake Toxaway.

The complainants make comparison between the rates to Cincinnati from Helen and the rate of 22 cents to the same point from Franklin, N. C., the terminus of the Tallulah Falls Railway, which extends 58 miles north from Cornelia, Ga., a point on the Atlanta-Spartanburg line 24 miles northeast of Gainesville. This rate was made with reference to the North Carolina adjustment, but the defendants now state their intention of placing Franklin on the Georgia rate basis. Traffic from the point named to Ohio River crossings moves through Atlanta, and the distances are 46 miles greater than from Helen.

The defendants further contend that weight should be given the fact that Helen is on a short line, which receives 3 and now asks 4 cents as its division of rates on lumber to the west. The complainants, on the other hand, call attention to the operating conditions on the Murphy branch, on which the traffic is light and the grades

steep, running as high as 4.5 per cent. At one place on that line the maximum tonnage which can be handled is 175 tons, or only about 6 cars per train. At another place on the same branch the maximum is 225 tons.

As hereinbefore stated, Cincinnati was taken as the representative crossing and the testimony referred mainly to traffic, rates, and conditions of transportation to that point. There was but slight reference to Buffalo-Pittsburgh territory and consequently we have not discussed the adjustment to that section.

Outside of certain differences in the conditions of transportation and the contention that a reduction from Helen would cause a disturbance in the general adjustment of lumber rates from Georgia points to the Ohio River, the only reason advanced by the defendants in justification of the extent of the present difference in the rates from points on the northern and southern slopes of the mountain range referred to is competition at Murphy of the Louisville & Nashville, which participates in traffic from both slopes, but, as above stated, is not a party to this complaint. That carrier reaches but one producing point of hardwood lumber in North Carolina served by the Southern Railway, and the latter carries rates lower than those from Murphy from comparatively near intermediate points. Therefore it can not successfully be contended that competition with the Louisville & Nashville fixes the measure of the rates from North Carolina, unless it be true, which the record does not show, that rates from North Carolina points on the Southern Railway are made to meet the competition of other hardwood lumber producing sections served by the Louisville & Nashville, in which case there would seem to be no justification for the making of rates from the North Carolina points on a competitive basis without according to Helen the advantage of the same basis, due allowance being made for differences in distance and in transportation conditions generally.

The testimony presented is not sufficient to justify us in fixing a maximum rate from Helen, but upon consideration of all the facts of record we are of opinion, and find, that the present adjustment of rates to the Ohio River crossings subjects complainants to undue prejudice and disadvantage and unduly prefers complainants' North Carolina competitors, and, bearing in mind the present relationship between North Carolina milling points, that for the future the rates from Helen to Cincinnati should not exceed those contemporaneously maintained to that point from Murphy by more than 3 cents per 100 pounds. The carriers will be expected to remove the discrimination found within 60 days from the service of this report, and to readjust their rates to the other Ohio River cross-

ings in accordance with the present relationship between said crossings in rates from Georgia and from North Carolina.

Nothing herein said should be understood as expressing any opinion as to the reasonableness of any increases or readjustments in rates proposed by the carriers.

No. 8226.¹

GLOBE SOAP COMPANY

v.

ABILENE & SOUTHERN RAILWAY COMPANY ET AL.

Submitted January 26, 1915. Decided June 13, 1916.

Rates for the transportation of cottonseed oil, soap stock, tank bottoms, and inedible tallow in carloads from points in Arkansas, Louisiana, Missouri, Oklahoma, and Texas to Cincinnati, Ivorydale, and St. Bernard, Ohio, representing increases made in June, 1915, considered. Because of defendants' reliance upon *The Five Per Cent Case*, 32 I. C. C., 525, case held open for further hearing.

Frank Van Slyck for Globe Soap Company.

William H. McGuffey for Procter & Gamble Company.

D. L. Meyers for Atchison, Topeka & Santa Fe Railway Company.

O. P. Bartlett for Houston & Texas Central Railroad Company; Galveston, Harrisburg & San Antonio Railway Company; Houston, East & West Texas Railway Company; and Morgan's Louisiana & Texas Railroad & Steamship Company.

C. C. Spalding for Chicago, Rock Island & Pacific Railway Company; and Chicago, Rock Island & Gulf Railway Company.

C. C. P. Rausch for Arkansas Central Railroad Company; Missouri Pacific Railway Company; St. Louis, Iron Mountain & Southern Railway Company; Texas & Pacific Railway Company; and International & Great Northern Railway Company.

T. J. Norton, C. S. Burg, Fred H. Wood, W. F. Dickinson, Wallace T. Hughes, Henry G. Herbel, Fred G. Wright, and Thomas Bond for defendants.

C. D. Dooley for Peet Brothers Manufacturing Company, intervenor.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

The complainants are engaged in the manufacture of soap and have their principal offices at Cincinnati, Ohio. The factory of the

¹The proceeding also embraces complaint in No. 8226 (Sub. No. 1), Procter & Gamble Company v. Same, 40 I. C. C.

Globe Soap Company is at St. Bernard and that of the Proctor & Gamble Company is at Ivorydale, Ohio. Both points are within the Cincinnati switching limits and take Cincinnati rates. It is alleged in the complaints that defendants' rates for the transportation of cottonseed oil, soap stock, tank bottoms, and inedible tallow from points in Arkansas, Louisiana, Missouri, Oklahoma, and Texas to Cincinnati, Ivorydale, and St. Bernard are unreasonable and unjustly discriminatory. The rates assailed represent increases which were made June 23 and 28, 1915, and reparation is asked on all shipments which have been made since the increased rates became effective. Peet Brothers Manufacturing Company, of Kansas City, Mo., intervened at the hearing, but offered no testimony.

The rates in question are joint rates and for the most part at least, while made with relation to the rates to St. Louis, were not based upon the aggregates of the intermediate rates to and from that point. Joint through rates from the southwest to Cincinnati and other points in central freight association territory, including those here involved, are divided by allowing the lines east of East St. Louis their local rates, while the lines south and west thereof receive the balance. Most of the increases in the rates involved amounted to one-half cent per 100 pounds and were based upon the permission given by the Commission in *The Five Per Cent Case*, 32 I. C. C., 325, 331, as follows:

Joint rates between official classification territory on the one hand and southeastern territory, the southwest, and points on or east of the Missouri River on the other, may be increased not to exceed 5 per cent of the division of the rate accruing to the carriers in official classification territory.

If the joint through rates had not been increased the lines south and west of St. Louis would probably have been compelled to shrink their divisions to the extent of the increases made in the local rates east of St. Louis.

There was also an unexplained increase of 2½ cents in the rates on cottonseed oil from certain Arkansas and Oklahoma stations designated in the tariff as group A points.

There are large manufacturers of soap at Chicago, Ill., St. Louis, Mo., Kansas City, Mo., Omaha, Nebr., Minneapolis and St. Paul, Minn., and other western points. Complainants purchase their raw materials, particularly those here involved, in competition with the manufacturers in the above-named cities and sell their soap in competition with them. Their complaints are grounded mainly on the fact that although the rates to Cincinnati have been increased, defendants generally have made no increases in the rates to the points at which their competitors are located. Complainants point out that defendants have thus disturbed an adjustment of long standing and contend that defendants' action in placing upon them an added

burden, which amounts to from \$2.75 to \$13.75 per car, constitutes an undue discrimination against them.

From the producing territory involved to Cincinnati the rates in question apply via St. Louis, via Memphis, via Vicksburg, and via New Orleans; and, since the rates via all routes are based on the St. Louis rate, the increases made in the rates via that point have resulted in similar increases in the rates via all gateways.

No evidence was offered by the defendants. They rely upon the above-quoted permission of the Commission.

The permission given in *The Five Per Cent Case*, *supra*, was necessarily general. That case did not approve any specific rate as reasonable in itself or as properly adjusted with respect to other rates, nor did it justify in advance any rate which might be published as a result thereof. The act casts upon the carrier the burden of proof to show that a rate increased after January 1, 1910, is just and reasonable and that burden is not removed by a general permission of the Commission, such as that relied upon by the defendants, for it is the total rate which must be justified and not the amount of the increase. Under the law the burden in this case was upon the defendants to show that the rates complained of were just and reasonable. They have failed to sustain that burden.

Because of defendants' reliance upon *The Five Per Cent Case*, *supra*, however, and the consequent failure to introduce any evidence in regard to the rates themselves, this case will be set for further hearing to afford an opportunity to introduce such proof as may be desired.

ILLINOIS GRAIN TO CHICAGO.

No. 8900.

IN THE MATTER OF RATES APPLICABLE ON GRAIN FROM POINTS IN ILLINOIS, VIA CHICAGO, TO INTER- STATE DESTINATIONS.

Submitted May 17, 1916. Decided May 29, 1916.

1. Grain originating in Illinois, shipped locally intrastate to Chicago, there sold, and subsequently shipped all rail under local rates, or via lake, to interstate destinations, is subject to the local intrastate rates from points of origin to Chicago.
2. Grain originating in Illinois, moving interstate to Chicago via the Elgin, Joliet & Eastern Railway, unloaded into elevators at Chicago, and subsequently shipped via lake under independent water line rates or charges, is subject to the local interstate rates from points of origin to Chicago.

J. S. Brown and Jeffery & Campbell for Board of Trade of the city of Chicago.

A. P. Humburg, C. C. Wright, R. B. Scott, and O. W. Dynes for the carriers.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

The principal question involved in this controversy is whether the interstate or the intrastate rates should be charged to Chicago, Ill., on grain originating at points in Illinois, billed to Chicago, and there stored in, or transferred through, elevators and ultimately moved therefrom on local rates to destinations beyond the limits of the state. In nearly every instance the interstate rate on grain from Illinois points to Chicago is higher than the intrastate rate. The shippers will hereinafter be referred to as complainants and carriers as defendants.

The complainants and defendants disagreed as to the rates legally applicable. In order to avoid the filing of many formal complaints, they submitted on an agreed statement of facts and argument on briefs the disputed questions for decision. The material facts follow:

The grain in question is shipped from Illinois points of origin to Chicago and is there placed on the inspection tracks of the inbound carrier, where it is sampled by the inspectors of the Illinois state grain inspection department. After being graded by this depart-

ment, the samples, together with the railroad notices of arrival, are delivered by it to the consignee on the exchange floor of the Chicago Board of Trade, where the grain is sold. After the sale the consignee gives disposition orders to the inbound road and at the same time surrenders to it the inbound billing. The disposition orders designate the elevator, mill, or warehouse in the Chicago district at which the grain is to be unloaded. Some of these are located at Indiana Harbor, Roby, and Hammond, Ind. It does not clearly appear whether the shipments are made to Chicago by farmers or by dealers located in the grain belt or are purchased f. o. b. Illinois stations by Chicago grain dealers. In some instances it would seem that the shipper is a Chicago grain dealer who is both consignor and consignee. In other instances it is stated in the argument that the farmer ships the grain direct to Chicago. In any event it clearly appears that there is a bona fide sale on the Chicago exchange, and that the grain changes hands before it is ordered to the elevators.

The grain is unloaded into the elevators, where it is mixed with other grain of like kind and grade and its identity is lost. In certain instances the grain is weighed, clipped, cleaned, cooled, bleached, or dried. The paid freight bills representing the inbound movement to Chicago are, in accordance with defendants' joint transit rules, registered by the buyers with defendants' transit representatives. The grain is held in the elevators awaiting demand for it, and subsequently is either consumed locally in the Chicago district, shipped out by lake to the east, or by rail in any direction, but principally to points in the east and to the Atlantic ports for export. Under the transit rules it may be held in store in the Chicago elevators for a period not exceeding 12 months and, if shipped within that time to points to which there are reshipping or proportional rates from Chicago, or joint through rates from point of origin via Chicago to ultimate destination, it is accorded the benefit of such rates. The parties agree that this is the legal method of assessing freight charges on the classes of shipments just described, and they are not involved here.

It likewise appears that from certain Illinois points to Chicago proportional rates to Chicago are applicable on grain forwarded from Chicago by lake to Buffalo and other eastern lake ports. While it does not affirmatively appear that the charges have been adjusted on these shipments, it would seem that this is the fact, because it is clearly stated that the only shipments to be considered here are those which moved into Chicago from Illinois points on straight interstate or intrastate rates and moved out on full local rates.

Among the rules in agent Rainer's I. C. C. No. 326 are the following:

Rule 13. The through rate to be applied to transit grain shall be the lawfully published rate through from the original point of shipment to final destination
40 I. C. C.

in effect via the transit point at the time of initial shipment from point of origin applicable to the grain covered by inbound billing which these rules permit to be matched against outbound shipments.

Rule 3. The period of time allowed for transit privilege will be 12 months from the date of unloading into the transit house. At the expiration of the time limit transit privilege shall absolutely cease, and full local rates (commodity or class) shall be assessed for any movement whatsoever, both into and out of the transit point.

In complainants' reply brief it is stated that in instances where shipments of grain move from Chicago under reshipping or proportional rates an elevation allowance is made to the shipper by the outbound carriers, and that in certain instances the carriers absorb the inbound switching. This does not appear from the stipulation of facts. It is clear, however, that no elevation allowance or absorption of switching is made on shipments which move out from Chicago on full local rates.

We are asked to decide what were and are the legal rates on the following five different classes of shipments:

(1) Grain originating in Illinois, shipped to Chicago, there stored in elevators and shipped by boat to Buffalo or other eastern lake ports outside the state of Illinois to which no rates by lake are published from Chicago. On such shipments the defendants that have no proportional rates to Chicago applicable on grain forwarded therefrom by lake contend that the interstate rates are applicable from the Illinois points of origin to Chicago. Complainants contend that the intrastate rates should apply to Chicago.

(2) Grain originating in Illinois, shipped to Chicago, stored in elevators and subsequently shipped by rail to destinations in northwestern Indiana, southeastern Wisconsin, and eastern Iowa to which no proportional or reshipping rates are published from Chicago. The local rates are applied from Chicago to these destinations. On such shipments defendants contend that the interstate rates to Chicago are applicable, while complainants insist that the intrastate rates should be applied.

(3) Grain originating in Illinois, after being sold on the Chicago exchange, is reconsigned from the inspection tracks in Chicago to Indiana Harbor, Roby, or Hammond, Ind. Certain of the defendants, and these are the only ones interested at this point, do not publish the interstate rates to Chicago as joint through rates from Illinois points to Indiana Harbor, Roby, or Hammond. In other words, their rates to Chicago do not include delivery to elevators located at these three points in the Chicago district. These defendants contend that the interstate rates should be applied to Chicago and the switching rates from Chicago to the elevators, while the complainants urge that the intrastate rates should be applied to Chicago plus the switching rates beyond.

(4) Grain originating in Illinois, shipped to Chicago, unloaded into elevators and subsequently shipped to Indiana Harbor, Roby, or Hammond under the local switching rates. On these shipments defendants contend that the interstate rates should be applied to Chicago and complainants insist that the intrastate rates should be assessed. This class of shipments differs only from those in number 3 in that they have been stored in the elevators at Chicago.

(5) Grain is shipped from Illinois points of origin on the Elgin, Joliet & Eastern Railway via an interstate route to Chicago and South Chicago, where it is unloaded into elevators. It is subsequently shipped east, sometimes via all-rail routes and in other instances by boat to Buffalo and other lake ports. By its tariff I. C. C. No. 1485, the Elgin, Joliet & Eastern Railway provides two rates via the interstate route to Chicago and South Chicago. The lower of the two is a local rate. The other is applicable on shipments destined to points east of the Indiana-Illinois state line. This tariff does not state that the higher interstate rate to Chicago will apply on grain shipped therefrom to points east of the Indiana-Illinois state line by lake. It does refer to agent Morris's I. C. C. No. 535 for the purpose of showing the points referred to east of the Indiana-Illinois state line. Complainants contend that the higher rate to Chicago and South Chicago should not be applied on grain shipped by boat to points east of the Indiana-Illinois state line, but only to that moving by rail.

There is no substantial difference between the above classes of shipments in so far as the question of the legal inbound rates is concerned. For this reason the questions presented can be dealt with broadly and the issues narrowed to whether the shipments to Chicago are interstate or intrastate.

Complainants insist that the decisions of the Supreme Court in *Coe v. Errol*, 116 U. S., 517, 524; *Gulf, Colorado & Santa Fe Ry. Co. v. Texas*, 204 U. S., 403, hereinafter referred to as the *Goldthwaite Case*; *C., M. & St. P. Ry. Co. v. Iowa*, 233 U. S., 334, hereinafter referred to as the *Davenport Case*; and our decision in *Merchants Exchange of St. Louis v. B. & O. R. R. Co.*, 34 I. C. C., 341, conclusively establish their contentions that the shipments in question are intrastate.

In *Coe v. Errol*, the court said:

When the products of the farm or forest are collected and brought in from the surrounding country to a town or station serving as an *entrepôt* for that particular region, whether on a river or a line of railroad, such products are not yet exports nor are they in process of exportation, nor is exportation begun until they are committed to the common carrier for transportation out of the state to the state of their destination or have started on their ultimate passage to that state.

Complainants contend that this is peculiarly applicable to the questions here discussed; that the instant case is stronger, as it appears here that the identity of the grain is lost and title to it changes hands at Chicago, and that the original shipper has only the intention of selling it in Chicago and has no interest in whether or not it is shipped beyond.

In the *Goldthwaite Case* a shipment of grain moved from a point in South Dakota to Texarkana, Tex., where, without being unloaded, it was reshipped under new billing to Goldthwaite, Tex. The court held that notwithstanding the grain was in the same car in which it reached Texarkana the Texas state rate was applicable from Texarkana to Goldthwaite because the interstate movement ended when the car reached Texarkana, where the shipment changed hands.

In the *Davenport Case* the railway company refused to forward from Davenport, Iowa, to interior points in the state shipments of coal in foreign cars, which originated without the state. The shipments were billed to Davenport. The consignee, after taking out new billing, ordered them reshipped to points within the state. The railroad commission of Iowa made an order requiring the carrier to so forward such shipments. The carrier's contention was that the shipment from point of origin to ultimate destination was a through interstate shipment. The state commission contended that the interstate character of the shipment ended on its arrival at Davenport. The court, in upholding the view of the Iowa commission, said:

It is undoubtedly true that the question whether commerce is interstate or intrastate must be determined by the essential character of the commerce, and not by mere billing or forms of contract. * * * But the fact that commodities received on interstate shipments are reshipped by the consignees, in the cars in which they are received, to other points of destination, does not necessarily establish a continuity of movement, or prevent the reshipment to a point within the same state from having an independent and intrastate character.

Complainants insist that the test to be applied in determining whether the shipments here considered are interstate or intrastate is laid down by the Supreme Court in *Texas & N. O. R. R. Co. v. Sabine Tram Co.*, 227 U. S., 111. The question there presented was whether lumber destined for export moving from interior Texas points to the port of Sabine, Tex., was subject to an interstate or an intrastate rate. In deciding that the interstate rate was applicable to the shipments the court said:

Upon the arrival of the lumber at Sabine it was carried without delay beyond and unloaded into the water in reach of ship's tackle. * * * There was only such delay as was incident to transshipment from rail carriage to water carriage, and to the nature of the traffic. * * * The determining circumstance is that the shipment of the lumber to Sabine was but a step in its trans-

portation to its real and ultimate destination in foreign countries. * * * It was to supply the demand of foreign countries that the lumber was purchased, manufactured, and shipped, and to give it a various character by the steps in its transportation would be extremely artificial.

Defendants insist that the shipments here in question are interstate. They urge that the existence of the transit service at Chicago, coupled with the use the shippers make of it, and the benefit the shippers receive from it, is the controlling factor in determining whether or not the shipments in question are subject to the interstate rates, because by the transit service the inbound movement is tied up to the outbound movement, making of the two one through movement. The two principal advantages the shipper has under this arrangement are alleged to be: (a) To hold the shipments for 12 months for favorable sale, with the export markets and all the markets of the east, the south, and the lake ports as bidders; (b) the benefit of a rate lower than the local outbound rate if there is such a rate applicable on the through shipment to the ultimate destination decided upon.

Defendants rely principally on the decision of the Supreme Court in *Ohio R. R. Comm. v. Worthington*, 225 U. S., 101, hereinafter referred to as the *Lake Cargo Coal Case*; and our decision in *Kanotex Refining Co. v. A., T. & S. F. Ry. Co.*, 34 I. C. C., 271.

In the *Lake Cargo Coal Case* an effort was made to have applied on shipments of coal the intrastate rate to the exclusion of the interstate rate for the portion of the haul from point of origin in Ohio to Cleveland and other lake ports within the state, when the shipment was intended to go forward to an interstate destination. In deciding that the shipments were interstate and that the interstate rate was legally applicable, the court said:

The so-called "lake cargo coal" is necessarily shipped beyond Huron. If it stops there another and higher rate applies. Practically all of it is put on vessels for carriage beyond the state, usually to upper lake ports, and then, and only then, the 70-cent rate fixed by the Commission applies. * * * It is true, as argued by the learned counsel for the Commission, that this coal may be taken out of the accumulated lots from time to time, when it is to be put upon vessels and shipped out of the state, but it must always be remembered that this 70-cent rate applies solely to such coal as is in fact placed upon vessels for carriage to beyond the state points. * * * The situation then comes to this: That the rate put in force is applicable only to coal which is to be carried from the mine in Ohio to the lake, there placed upon vessels, and thence carried to upper lake ports beyond the state. By every fair test the transportation of this coal from the mine to the upper lake ports is an interstate carriage, intended by the parties to be such.

Defendants contend that the *Lake Cargo Coal Case* is analogous to the instant case in that there the court held it was of no consequence that the billing was only to Huron, because the contract for

that movement was tied up by the tariffs to a further carriage beyond Huron. They urge that on the shipments here considered the transit service ties up the inbound shipments by contract for a haul beyond. Complainants insist that the *Lake Cargo Coal Case* is not in point because it clearly appeared there that the coal involved was destined to interstate points beyond the Ohio lake ports.

Defendants take the position that the complainants by recording their shipments for transit and ultimately forwarding them to interstate destinations at which the most favorable purchase price can be obtained have fixed their status as interstate shipments irrespective of whether the rates are through rates, combinations of proportional rates, combinations of local rates, or combinations of proportional and local rates.

Complainants contend that the contract for the movement to Chicago is ended when the bill of lading covering that movement is surrendered by the Chicago consignee, at which time he pays the freight charges based on the local rate and unloads the grain into the elevator; that while it is true one of the buyers then registers the inbound freight bill with the carriers' transit bureau, it may be he will never use this billing for transit purposes; that unless he later surrenders it for the purpose of securing a joint through rate from an interior Illinois point to some point beyond Chicago, or a rate into Chicago less than the local rate, or a rate out of Chicago less than the local rate, he has not availed himself of the transit. They insist that when the buyer registers his inbound billing with the carriers' transit bureau he does not thereby contract to later ship out the grain, but by such registration merely avails himself of the right to contract for outbound movement at whatever through rate or reshipping rate is available under the terms of the transit tariff; that the registration of the inbound billing gives the shipper the option of claiming his transit at some later time, but does not bind him to do so. In this connection they cite our decision in *Merchants Exchange of St. Louis v. B. & O. R. R. Co.*, *supra*, wherein we said:

And it would therefore be unlawful to require the cancellation of inbound billing on shipments made outbound under the local rates. The difference between the interstate and intrastate rate inbound could not be collected on an outbound shipment at the local rate. The intrastate movement to St. Louis must be considered as a separate movement and can not be tied up to the outbound movement in such a manner as to consider the two one through movement.

Complainants call attention to the fact that rule 3 of the transit tariff hereinbefore quoted provides that where a shipper fails to reship grain from Chicago within 12 months from the date of unloading into the transit house the full local rates both into and out of

the transit point shall be applied; that the object of the rule is to deprive a shipper of the transit at a rate less than the Chicago combination when he fails to ship out within 12 months. It is asserted that under the interpretation which defendants attempt to place upon the tariffs applicable to the shipments in question, complainants are in fact penalized if their shipments are made within the 12 months period, because by holding them at Chicago longer than 12 months the only through rate on which they could legally move would be the full locals into and out of the transit point, which would consist of the intrastate rate in and the local rate out.

The decision in *Merchants Exchange of St. Louis v. B. & O. R. R. Co.*, *supra*, on which complainants rely, is analogous here. In that case it appeared that the intrastate rates on grain from interior Missouri points to St. Louis were from one-half cent to 6 cents per 100 pounds lower than the interstate rates. Reshipping rates as well as local rates were in effect from St. Louis to many points east thereof.

Grain moving to St. Louis is not billed through to destinations beyond, but to consignees at St. Louis, by whom it is sold on the grain exchange. It frequently changes hands several times. The purchaser takes constructive or actual possession of the grain and reships it without unloading, or he may store it in elevators, or mill it into flour before finally shipping it on. We held that in so far as the charges for the through movements, consisting of the intrastate rates inbound and the local rates outbound, were concerned, the situation was governed by the decisions of the Supreme Court in the *Goldthwaite Case* and the *Davenport Case*, and that the St. Louis miller was not required to pay the interstate rates inbound. In the course of that decision we said:

The plan of the Southern Missouri Millers Club is open to the further objection that it is based upon a hypothesis which the law will not permit, namely, that it is possible to deny the right to make two separate and dissociated shipments of the same commodity, the one at a local rate in and the other at a local rate out of St. Louis. While reshipping or proportional rates should in all cases be regarded as applicable only for part of a through, but suspended, movement from point of origin to ultimate destination, local rates, although they may likewise apply to part of a through movement, can not be limited according to the point of origin of the shipment or the rates which were paid inbound. So long as there are intrastate rates published to St. Louis, shippers can not be denied the right to avail themselves of these rates for movements which are clearly intrastate, and so long as there are flat rates published out of St. Louis, shippers must be permitted, if they have in the meantime in good faith taken possession, to ship outbound under these rates irrespective of the rates paid inbound. In reaching this determination, we do not lose sight of the fact that as practically all grain shipped from St. Louis comes from points beyond, all of the outbound rates, local as well as reshipping or proportional, are in one sense divisions of the through rates from the point of production to the ultimate destination. * * *

All the carriers leading from St. Louis provide for the absorption of elevation charges of one-fourth cent per bushel on outbound shipments of grain that has been stored in elevators at St. Louis. This absorption is made on the theory that the inbound and outbound movements comprise a through movement and that the grain has been elevated in transit. Whenever the absorption is made the grain can not lawfully move forward except at the balance of the through rate. It would, however, be to the shipper's advantage in certain cases to refuse the elevation allowances and insist that his grain move forward as a purely local shipment. There is nothing to prevent the miller at St. Louis from making inbound and outbound local shipments entirely dissociated from each other.

* * * * *

* * * The local rates out of St. Louis can not be limited according to the point of origin of the shipment or the rates which were paid inbound, and it would therefore be unlawful to require the cancellation of inbound billing on shipments made outbound under the local rates. The difference between the interstate rate and the intrastate rate inbound could not be collected on an outbound shipment at the local rate. The intrastate movement to St. Louis must be considered as a separate movement and can not be tied up to the outbound movement in such a manner as to consider the two one through movement.

It is clear that under the tariffs the complainants may elect as to whether they will ship this Illinois grain out from Chicago at a local or a proportional rate, provided a bona fide inbound local shipment has been made and the billing has been recorded for transit. By such a practice the shipper does not change the character of the inbound shipment but simply protects his right to avail himself of a local or a proportional rate outbound.

It follows that as to shipments of Illinois grain moving and handled in the manner and under the circumstances and conditions hereinbefore described the shipments coming under the specified headings 1 to 4, inclusive, are properly subject to the state rates for the intrastate movement to Chicago, and that the shipments under heading 5, moving from Chicago by lake, are subject to the lower or local interstate rates to Chicago.

HARLAN, Commissioner, dissenting:

In the cases where the Supreme Court of the United States has determined whether particular commerce was state or interstate the distinction made has ultimately rested upon the intention of the shipper; that is to say, where freight is put in transit with the intention, at the time, of shipping it to a point outside the state, the character of the transportation has been held to be interstate, irrespective of the billing used or the method of reshipping employed. *Gulf, Colorado & Santa Fe Ry. Co. v. Texas*, 204 U. S., 403; *Texas & N. O. R. Co. v. Sabine Tram Co.*, 227 U. S., 111; *Ohio R. R. Comm. v. Worthington*, 225 U. S., 101; *C., M. & St. P. Ry. Co. v. Iowa*, 233 U. S., 334. When the Chicago consignee or purchaser of

grain registers in the Chicago transit account freight bills covering shipments from stations in Illinois he thereby keeps the commerce in transit, although temporarily interrupted, and has the right later to direct its further movement, to interstate destinations beyond Chicago, under interstate rates from the original point of shipment. Under the special circumstances shown of record I am of the opinion that the defendants' contention that in such cases they ought in the first instance to collect the interstate rates, from the Illinois points of origin to Chicago, is a sound one, the charge into Chicago to be subject of course to readjustment to the basis of the state rate, in case the grain is not later forwarded to an interstate point under a proportional or a reshipping rate.

40 I. C. C.

No. 8136.
NASHVILLE ABATTOIR, HIDE & MELTING ASSOCIA-
TION ET AL.
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

INVESTIGATION AND SUSPENSION DOCKET No. 715.
LIVE STOCK SWITCHING AT NASHVILLE, TENN.

Submitted February 4, 1916. Decided June 22, 1916.

Defendant's refusal to deliver and receive carload shipments of live stock at complainant's private siding in Nashville, Tenn., found not to be unreasonable or unjustly discriminatory.

T. M. Henderson for complainants.

W. A. Northcutt for Louisville & Nashville Railroad Company.

Claude Waller and *Fitzgerald Hall* for Nashville, Chattanooga & St. Louis Railway.

J. B. Keeble for Union Stock Yards, intervener.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

These cases, which were heard together, and will be disposed of in one report, involve the regulations and practices of the Louisville & Nashville Railroad Company, the Nashville, Chattanooga & St. Louis Railway, and the Louisville & Nashville Terminal Company respecting the delivery of live stock in carloads at points within the switching limits of Nashville, Tenn. The latter company is owned and controlled jointly by the two defendants first named. Complainants and protestants are the Nashville Abattoir, Hide & Melting Association, hereinafter termed the abattoir association, and the Tennessee Commission Company, hereinafter termed the commission company, corporations engaged in slaughtering or handling live stock at Nashville.

The principal allegation of the complaint is that defendants unjustly discriminate against complainants by refusing to make free delivery of live stock in carloads at any point within the switching limits of Nashville except at the Union Stock Yards and the state fair grounds. On the record, however, the issues were broadened to include the question of the reasonableness or unreasonableness of defendants' rules and their refusal to make the deliveries prayed for. The evidence on this point was not objected to. It is also alleged

that live stock intended for slaughter at the plant of the abattoir association and delivered originally at the Union Stock Yards must be driven through the streets of the city, across certain street car lines and railroad tracks, resulting in injury to the stock, expense to complainants, and danger to pedestrians; that the Union Stock Yards Company, hereinafter called the stockyards company, acts as agent for the railroads in loading and unloading live stock, collecting freight charges, waybilling shipments, etc., and that certain officers of the stockyards company have been and are engaged in the live-stock business in competition with the commission company, thereby discriminating unjustly against that company; that defendants' charge for the delivery of interstate carload shipments of live stock upon the siding of the abattoir association is unjust and unreasonable, in violation of section 1 of the act; and that defendants do not observe their tariff rules respecting the handling of live stock within the switching limits of Nashville, but apply other rules not specifically stated in such tariffs.

The tariff of the Nashville, Chattanooga & St. Louis Railway, governing the switching of freight traffic at Nashville, provides as follows:

There is no switching charge to or from locations on tracks of the Nashville terminals within switching limits on freight traffic, carloads, from or destined to Nashville, Tenn., via the Nashville, Chattanooga & St. Louis Railway regardless of whether such traffic is from or destined to competitive or noncompetitive points.

A similar rule is carried in the tariff of the Louisville & Nashville Railroad. The rule creates the impression that all carload freight will be received or delivered upon industrial sidetracks within the switching limits of Nashville, free of switching charges, and is misleading in view of defendants' practices respecting delivery of live stock, as hereinafter explained. In order to correct any misunderstanding that might arise as to the application of the above-quoted rule, the Nashville, Chattanooga & St. Louis Railway has filed an amendment to its tariff which contains the following rule:

Except as herein stated, Union Stock Yards (location 435) constitute the exclusive depot of the Nashville, Chattanooga & St. Louis Railway for the receipt and delivery of Nashville live stock. The rates, rules, and regulations appearing in this tariff are not applicable on live stock except when said stock is received at or forwarded from location 435 as above, neither will this tariff cover the switching of live stock between location 435 and other locations shown herein.

Exception.—Live stock, including race horses, may be delivered to or received at location 347 (state fair grounds) when for exhibition purposes or for other purposes relating to the state fair association.

By orders of the Commission, the effective date of this amended rule was suspended until July 25, 1916.

The abattoir association operates a slaughtering establishment, buys and sells hides, grease, fertilizer, etc., and manufactures ice, but is not a shipper of live stock. Its facilities are available to all who may bring live stock to the abattoir for slaughter, but the local butchers of Nashville are its principal patrons. Its plant is located on a spur track served by defendants, and its equipment includes stock pens and one chute for unloading live stock from single-deck cars into its yards. The commission company conducts a live-stock commission business and also buys and sells live stock on its own account. It now uses the facilities of the stockyards company but has made tentative arrangements to lease and use the stockyards of the abattoir association.

The plant known as the Union Stock Yards has been defendants' exclusive live-stock depot in Nashville for many years. A copy of a contract entered into in 1880 between defendants and the Union Stock Yards Company of Nashville was introduced in evidence. By the terms of this contract the stockyards company agreed to erect and maintain a suitable live-stock depot, which defendants agreed should be their exclusive depot for the receipt and delivery of live stock in Nashville. The present Union Stock Yards Company is said to be the successor in interest of the stockyards company, with which this contract originally was made. It filed an intervening petition and was represented by counsel at the hearing and on brief.

The requirement that all live stock shipped to Nashville shall be delivered at the Union Stock Yards appears to have been rigidly adhered to except in a few instances in which deliveries were made at the fair grounds of live stock not intended for immediate slaughter, and not for purposes connected with the state fair association. It is shown, however, that with one exception these deviations from the established practice were permitted in order to avoid the operation of quarantine regulations which required the immediate slaughter of all live stock delivered through the stockyards. All shipments said to have been delivered at the fair grounds during the year 1915 in contravention of defendants' rules governing such deliveries appear to have been intrastate. There is no evidence that defendants unjustly discriminated against complainants by delivering such shipments at the fair grounds and refusing to deliver interstate shipments of live stock under similar circumstances and conditions upon the sidetrack of the abattoir association.

Defendants admit that the Union Stock Yards Company is their duly constituted agent, with respect to the loading and unloading of live stock, the collection of freight charges, the issuance of live-stock contracts, and the waybilling of shipments. The vice president of the stockyards company is now and for many years has been engaged in the live-stock business. The superintendent of the stock-

yards company has engaged in the live-stock business to a limited extent during the period of his service as superintendent, but he has not been so engaged since November, 1914. The transportation records kept by the stockyards company, showing the kind, quantity, point of origin, disposition, etc., of all live stock handled through the stockyards, have been readily accessible to these officials. The commission company complains that the information obtained from such records has been or may be used to its disadvantage and contends that it should not be compelled to use transportation facilities which are owned or controlled by its competitors. Defendants urge that this contention is not worthy of serious consideration because the commission company and all other live-stock dealers engaged in business at the stockyards have been afforded an equal opportunity to examine the records and thus to obtain information as to their competitors' business. As was said in *Albree v. B. & M. R. R.*, 22 I. C. C., 303, the prohibition contained in section 15 of the act against the disclosure by common carriers of information concerning the business transactions of their patrons is intended to secure to every shipper immunity from a disclosure of his business at the hands of a common carrier. Obviously, the mere absence of injury to complainants does not excuse defendants' failure to require their agent to conform to the requirements of the law.

The plant of the abattoir association is about 2½ miles from where the stockyards were located at the time of the hearing herein in November, 1915. New stockyards were then being constructed, and it was said that they would be completed within 30 days. The new yards are situated on the same spur track as the plant of the abattoir association about 1½ miles from the abattoir and approximately the same distance from defendants' break-up yards. Testimony was offered on behalf of complainants to the effect that the driving of live stock from the stockyards to the abattoir causes a shrinkage in the weight of the animals, unfits them for immediate slaughter, entails expense upon the owner, and constitutes a source of danger to pedestrians. Certain patrons of the abattoir association testified that they would prefer to pay defendants a reasonable charge for switching shipments from the stockyards to the abattoir rather than to incur the hazard and expense of driving the stock through the streets. The cost of driving a drove of cattle or hogs from the stockyards to the abattoir, which is borne by the owner and not by complainants, is said to range from 50 cents to \$3 and to average about \$1.50 or \$2. It appears, however, that but a very small portion of the live stock slaughtered by the abattoir association passes through the stockyards, and that in no instances do the patrons of the abattoir association receive carload consignments. Their stock is purchased

in small lots after its arrival at the stockyards. A switching service on such stock would, therefore, be an intrastate movement. It further appears that a very small proportion of the live stock consigned to the Nashville market originates at interstate points. The record indicates that during the year ended October 1, 1915, 97 per cent or more of the shipments were intrastate. It is said, however, that from 60 to 65 per cent of the live stock received at Nashville eventually is shipped to interstate destinations. As noted, complainants allege that the charge for the delivery of live stock upon the siding of the abattoir association is unjust and unreasonable, but the record discloses that no charge for that service is published in defendants' tariffs, and that except in a few instances where, as an accommodation, shipments were switched from the stockyards to the plant of the abattoir association on account of quarantine regulations or the crippled condition of the stock defendants have not received or delivered live stock at that point.

Defendants assert that traffic and operating conditions necessitate the maintenance of a single live-stock depot in Nashville, and that should they be required to receive or deliver live stock at any place except the stockyards it would materially increase the expense of handling this class of traffic and make it difficult for them to comply with the quarantine regulations, the laws relating to the disinfection of stock cars and the unloading of live stock for food, rest, and water, or to supervise properly the loading and unloading for the purpose of protecting themselves against unreasonable claims for damage in transit.

These contentions are denied by complainants, who assert that the duty to comply with the quarantine regulations and other laws relating to the handling of live stock rests primarily upon shippers and that defendants are under no obligation to transport live stock unless it is shown that the requirements of the law have been observed. Complainants also contend that the receipt and delivery of live stock at the plant of the abattoir association would involve but little additional trouble or expense inasmuch as the plant is located on the same spur track as the new stockyards and is only about 1 mile farther from defendants' break-up yards. They urge that in no event would the difficulty and expense be greater in the case of live stock than in the case of dead freight, which, under the provisions of defendants' tariffs, is delivered at the plant of the abattoir association without additional charge.

Defendants contend that merely because they receive and deliver interstate shipments of dead freight on the sidetrack of the abattoir association, they are under no obligation to receive and deliver interstate shipments of live stock at that point. A decision of the supreme court of the state of Tennessee and certain decisions of

the federal courts are relied upon as supporting this contention. It appears that in June, 1914, complainants herein filed a bill in the chancery court of Davidson county, Tenn., in which many of the allegations were substantially the same as those contained in the instant complaint, and asked that defendants be required to deliver intrastate shipments of live stock on the sidetracks of the abattoir association. The case was submitted on the pleadings and the court decreed the relief asked. Upon appeal to the court of civil appeals it was held that as questions of fact were involved which had not been admitted in defendants' answers, the trial court had erred in entering such a decree, and the case was remanded for the taking of testimony and disposition in the usual way. The decision of the court of civil appeals was affirmed upon complainants' appeal to the supreme court of the state. In announcing its decision, the supreme court said:

In the making of such deliveries the railway companies would be operated with the consequences due to the hazard to live stock in the jars and lurches incident to the numerous movements of the cars in their being placed on spur tracks used by such offerers. The stock would have to remain on board cars during the delay incident to the switching operations, a matter affecting their being fed and watered. Further, there are regulations of the federal and state governments requiring live stock under certain conditions to be inspected and quarantined, and under other conditions to be treated by being dipped for protection against certain diseases; and facilities for all such required purposes could not reasonably be furnished at many loading places in the same city.

The fact that inanimate or dead freight may be required to be delivered to customers on the spur tracks at their plants is no sufficient reason for a like rule being applied to live stock. The above considerations afford the refutation, not to mention the difference in the duty of the carrier in reference to the two kinds of freight long recognized by the law.

The decisions of the federal courts relied upon by defendants, and also cited in the decision of the supreme court of Tennessee, are those in *Covington Stockyards Co. v. Keith*, 139 U. S., 128; *Butchers' & Drovers' Stock-yards Co. v. Louisville & N. R. Co.*, 67 Fed., 35; *Central Stock Yards Co. v. Louisville &c. Ry. Co.*, 192 U. S., 568. In each of these cases it was sought to compel a carrier which had employed a stockyards company to supply the requisite facilities for the receipt and delivery of live stock to receive and deliver live stock at another stockyards in the same city, but the questions primarily involved related to the furnishing of facilities which the carrier was under obligation to the public to furnish and the interchange of traffic with a connecting line. Those decisions, rendered before the Commission was invested with jurisdiction over "all matters relating to or connected with the receiving, handling, transferring, storing, and delivery of property," can not be said to limit our power to direct the removal of unjust discrimination or to prescribe reasonable rules

and practices. In *Baltimore Butchers Live Stock Co. v. P., B. & W. R. R. Co.*, 20 I. C. C., 124, they were held not to apply to a situation similar in principle to that involved in the instant cases. In that case we said:

No physical obstacles to the delivery of live stock at the yards are shown to exist. No operative problems need be solved by the railroad officials before such deliveries can be made. The sole reasons shown in the record for refusal on the part of the defendants to deliver live stock at complainant's yards are the alleged advantages to the general live-stock market of Baltimore arising from the centralizing of the business and the provision in the contract with the Union Stockyards Company, under which it is agreed that the yards of that company shall be the exclusive live-stock depots. * * * The railroads defendant may not make contracts which abrogate the act to regulate commerce. They may not refuse, because of their own contract, to furnish a delivery that is reasonable upon tracks which they use as a terminal for these shippers; they may not discriminate as between commodities in the delivery which they give where no reason exists for such discrimination excepting the presence of a contract made with a private corporation, as in this case.

We have here, however, substantially different facts, circumstances, and conditions. It is strongly urged that to grant complainants' prayer would entail loss of efficiency, prevent proper economy in handling shipments, involve additional expense to defendants, and subject them to increased loss and damage claims and penalties.

The plant of the abattoir association is equipped, as stated, with facilities for the receipt and delivery of live stock in single-deck cars, and the questions to be determined are whether or not, under the conditions existing at Nashville, defendants' refusal to furnish service to and from complainants' plant is unreasonable or unjustly discriminatory. It is clear that the receipt and delivery of live stock at the stockyards is less expensive to defendants and makes compliance with the various state and federal regulations governing the inspection, disinfection, quarantine, loading and unloading, feeding, watering, and caring for the stock more certain and less onerous than would be the case were they required to receive and deliver it at additional points within the switching limits of Nashville. There is no allegation or proof that the facilities of the stockyards company are inadequate or that any charge is made for the use of its facilities if the live stock is removed by the shipper within a reasonable time. The facilities of the abattoir association are much inferior to those of the Union Stock Yards. As has been seen, the patrons of the abattoir association do not in any instance receive live stock in car-load lots. It does not appear that the driving of live stock from the stockyards to the abattoir is attended with unreasonable expense to complainants or with serious risk of injury to the live stock or to pedestrians.

The fact that a carrier has entered into a contract to make a particular stockyards its sole terminal for delivery and receipt of live stock can not be controlling. Such a contract, in common with all other private contracts, must be disregarded if in any way it transgresses or conflicts with any provision of the act. It is a matter of common knowledge that in many places live stock is delivered and received at two or more stockyards in the same city. No rule of universal application can be laid down. Each case must be determined according to the facts, circumstances, and conditions presented. The interests of the public, or of a substantial part of the public, served by the carrier must be duly considered. There is here no showing that public necessity or convenience would be served or promoted by requiring the establishment of a second live-stock terminal in Nashville.

Upon all of the facts of record we find that defendants' regulations and practices governing the delivery of live stock in Nashville are not shown to be unreasonable or unjustly discriminatory.

The Louisville & Nashville Railroad Company will be expected to promptly take such steps as may be necessary to bring into conformity with the requirements of the law the conduct of its agent, the stockyards company, and to publish and file a tariff rule respecting delivery and receipt of shipments of live stock at Nashville which will clearly differentiate the method of handling this traffic from that of handling other carload traffic.

The complaint will be dismissed, and the order of suspension will be vacated as of July 25, 1916.

HARLAN, *Commissioner*, concurring:

I concur in the finding by the majority that no public necessity has been shown upon this record for a second live-stock terminal at Nashville; but, going further, I am also of the opinion that the defendant carriers should not be required to extend their Nashville rates beyond their own live-stock depot at that point. The complainants, however, are not requesting the defendant carriers to establish and maintain at Nashville two separate depots or yards for the unloading and delivery of live stock. They point out that their abattoir plant offers the same facilities and services incident to the unloading and yarding of live stock as are offered by the defendant carriers at their general live-stock depot, and they ask only that the defendant carriers shall be required to place cars containing live stock on the abattoir tracks. These tracks are public facilities and the record does not show that any operating disabilities exist that would make a switching service over them unduly onerous. As stated in the report, certain patrons of the abattoir association would prefer to pay a reasonable charge for the switching service, rather

than incur the hazard and expense of driving the stock through the streets. Upon the broad principle that the terminals of a carrier should be kept open for the use and convenience of the shipping public, so far as that is practical, I am of the opinion that when shippers stand ready to pay a reasonable charge therefor the defendants should be required to perform on their interstate live-stock shipments the switching service desired.

McCHORD, Commissioner, dissenting:

I am unable to agree with the conclusions reached by the majority report in denying the relief sought. It is said therein:

There is here no showing that public necessity or convenience would be served or promoted by requiring the establishment of a second live-stock terminal in Nashville.

The finding so set forth is the real basis of the decision in this case, for which I find no warrant in the record. There is no issue here of the advisability or necessity of establishing a second live-stock terminal in Nashville. It is not desired to establish another live-stock terminal. The complaint seeks to require a carrier to make industry delivery of carload live stock at a plant located on a spur track of the defendant within its defined switching limits. It appears that the defendant does make carload deliveries of other freight on said sidetrack. Public necessity or convenience is not an issue raised on this record. The question is solely one of private rights under the act to regulate commerce.

In *Baltimore Butchers Live Stock Co. v. P., B. & W. R. R. Co.*, 20 I. C. C., 124, cited in the majority report, the identical issue was raised, and the Commission required the railroad to make industry deliveries of carload live stock. Not only are the two cases identical in principle, but they are identical in fact. The same contentions were made by the carriers in that case with respect to efficiency and economy of operation and loss and damage claims and penalties, etc., as are advanced in this case, and likewise the quarantine regulations prominently referred to in the majority report were in effect at the time of the consideration of the *Baltimore Case* and can not be taken, therefore, as changed conditions warranting a different decision in this case from the holding in the *Baltimore Case*. It would be hard to find two cases independently tried more nearly parallel in principle and fact. The majority opinion does not disagree with the decision in the *Baltimore Case*. I can see no difference between the two cases, and being of the opinion that the *Baltimore Case* was right I am unable to agree to denial of the relief sought in this case.

No. 8898.

ASHTABULA-PORT MAITLAND CAR-FERRY SERVICE.

Submitted June 13, 1916. Decided June 21, 1916.

Upon application of the Michigan Central Railroad Company under the provisions of section 5 of the act to regulate commerce, as amended by the Panama Canal act, to institute a boat-line service between Ashtabula, Ohio, a south bank port on Lake Erie, and Port Maitland, Ontario, a north bank port on said lake, in which said petitioner will have an interest, *Held:*

1. That by reason of the interownership of stock existing between the several railroads here involved, which furnish an all-rail route between the ports mentioned via which joint through rates are applicable, it is possible for the petitioner as a party to such through routes to compete with the proposed boat line in which it will have an interest within the meaning of the act.
2. Upon the facts of record the proposed boat-line service will be in the public interest and of advantage to the convenience and commerce of the people and will neither exclude, prevent, nor reduce competition on the route by water under consideration, if properly operated.

Henry Russell for Toronto, Hamilton & Buffalo Railway Company.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

This is an application by the Michigan Central Railroad Company, under the provisions of section 5 of the act to regulate commerce, as amended by the Panama Canal act, to institute a car-ferry service between Ashtabula, Ohio, on the south bank of Lake Erie, and Port Maitland, Ontario, on the north bank of said lake.

The Toronto, Hamilton & Buffalo Railway Company, a subsidiary of the petitioner, has purchased a car ferry with a capacity of 30 loaded freight cars of 50 tons each, at a cost of \$385,000. This railroad is also extending its line from Dunnville to Port Maitland, at which point necessary slip docks are also under construction. This extension of the dock facilities will be completed in July, 1916, and the car ferry will be delivered by its builders at about the same time. It is desired to institute a car-ferry service at once between the Toronto, Hamilton & Buffalo via Port Maitland and Ashtabula, connecting with the New York Central at said south bank port.

A corporation will be organized under the laws of the state of Ohio which will take over and operate the car ferry. All the stock of this

corporation will be owned or held in the interest of the Toronto, Hamilton & Buffalo Railway Company.

The petitioner holds 17.9 per cent of the stock of the Toronto, Hamilton & Buffalo; 17.9 per cent is held by the Canada Southern Railway Company, and the petitioner in turn owns 51 per cent of the stock of the Canada Southern; 27.1 per cent is held by the Canadian Pacific Railway Company; 37.1 per cent is held by the New York Central, which also owns approximately 90 per cent of the stock of the petitioner.

The Toronto, Hamilton & Buffalo connects with the petitioner at Welland, and the petitioner has a line extending from Welland to Buffalo. The New York Central has a line from Buffalo to Ashtabula. The Toronto, Hamilton & Buffalo publishes joint through rates from points on its line to destinations on the New York Central via the all-rail route indicated. The petitioner, as a party to this through route, participates in the joint rates so published. There is, therefore, a possibility of competition established between the interested railroads and the boat line which they seek to inaugurate.

It appears, however, that the car-ferry service proposed will greatly expedite the movement of freight from points adjacent to the south and north banks of Lake Erie and the territory tributary thereto, and relieve by so much the congestion at the Niagara frontier. Under normal conditions it is shown that it takes at least three days to get freight cars through the Buffalo terminals and a further delay is encountered in getting across the international bridge, which is a one-track structure, furnishing the only channel of rail transportation in that locality between the United States and Canada, and is, therefore, in great demand for passenger as well as freight traffic. The transportation of freight between the two ports all rail under the most favorable conditions can only be accomplished in six or seven days, whereas via the proposed car-ferry service the maximum time required will be eight hours. The cost of the service by ferry, it is said, will be less than half of the cost by rail. While the ferry will use the New York Central docks at Ashtabula, it will not be under exclusive contract with that road and is open to arrangement with any other road at that port desiring to use its across-lake service for the purpose of getting traffic up to Port Maitland.

Since this is a new service it could not be said that in its inauguration it would have the effect of excluding, preventing, or reducing competition, but these ends might be accomplished by improper methods of operation. This contingency is within the purview of the act and if such a result should be effected, the attention of the Commission may be directed thereto upon subsequent proceedings.

From a consideration of the facts and circumstances here shown the Commission is of opinion and finds that the proposed specified service by water will be in the interest of the public and of advantage to the convenience and commerce of the people, and that it will neither exclude, prevent, nor reduce competition on the route by water under consideration, if properly operated. The corporation to be organized for the purpose of operating the car ferry will be expected to file its tariffs stating its charges for the service which it holds itself out to the public to perform. These tariffs should be filed in accordance with the provisions of the act to become effective not less than five days after such filing. An order will be entered accordingly:

40 I. C. C.

No. 8147.

CHATTANOOGA IMPLEMENT & MANUFACTURING
COMPANY ET AL.

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL

Submitted January 17, 1916. Decided June 13, 1916.

1. Upon the record, *Held*, That no showing has been made for requiring the defendants to apply over other routes the rates on pig iron from Ironaton and Shelby, Ala., to Chattanooga and Boyce, Tenn., at present applicable over the Louisville & Nashville and Tennessee, Alabama & Georgia railroads.
2. Reparation denied except upon one misrouted shipment shown of record.

O. L. Bunn for complainants.

Charles D. Quinn for Louisville & Nashville Railroad Company.

H. F. Bohr for Tennessee, Alabama & Georgia Railroad Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

Chattanooga is an important manufacturing city in the state of Tennessee and under normal conditions the more than 20 furnaces located there use about 880 tons of pig iron a day. Boyce is a suburb of Chattanooga, being but 5 miles distant, and both points ordinarily take the same rates.

As far back at least as 1908 the rate to both Chattanooga and Boyce on pig iron moving from Ironaton and Shelby, local points on the Louisville & Nashville Railroad in the state of Alabama, was 75 cents a gross ton. This rate was applicable over several routes. On June 20, 1913, the rate was canceled as to Chattanooga, and on January 15, 1914, it was canceled as to Boyce. The withdrawal of the rate to Chattanooga left in effect to that point a gross ton rate of \$1.15, being the combination of the local rates, 50 cents from Ironaton and Shelby to Gadsden and 65 cents thence to Chattanooga and Boyce. But as the 75-cent rate remained in effect to Boyce, to which point, over all routes, except that as to which the Western & Atlantic is the delivering carrier, Chattanooga is intermediate, a lower basis of rates was available by using the 75-cent rate to Boyce and paying a switching charge of \$5 a car from that point to Chattanooga. When, however, on January 15, 1914, the rate of 75 cents to Boyce was also canceled, there was left in effect to both destinations the

combination rate of \$1.15 just referred to. The through rates on pig iron to Chattanooga and Boyce were canceled not only from Ironaton and Shelby but from all the Alabama pig-iron furnaces located on the Louisville & Nashville. As the result, however, of the solicitation of the complainants and the producers of pig iron at Ironaton and Shelby the 75-cent rate to Chattanooga was, on June 12, 1914, reestablished from Ironaton; the following day a rate of 80 cents became effective from the same point to Boyce; and on August 8, 1914, the rates of 75 and 80 cents to Chattanooga and Boyce, respectively, were established also from Shelby. But instead of being made applicable over several routes, as formerly, the new rates were restricted to the route through Gadsden, in connection with the Tennessee, Alabama & Georgia Railroad.

Out of the 75-cent rate the Louisville & Nashville formerly received 45 cents a ton for its haul of 51 miles from Ironaton to Gadsden, while the Tennessee, Alabama & Georgia, for a line haul of 92 miles, received the remaining 30 cents. As the average carload contained approximately 30 tons, the latter carrier received but \$9 a car, out of which it was obliged to absorb terminal charges at Chattanooga, amounting on the average to \$3.50 a car. Under the restored rate the Louisville & Nashville receives 5 cents a ton less than formerly and the Tennessee, Alabama & Georgia 5 cents more. In explanation of its action in canceling the rate which had been in effect for a number of years, the Louisville & Nashville stated that it was done because—

there was no margin of profit in this operation; that is, the cost of transportation absorbed, or practically so, all of the revenue.

The 75-cent rate is now in effect from 22 competing points in the Birmingham district, and from 5 other points rates ranging from 50 to 75 cents are in effect. So long, therefore, as these lower rates remain in effect from so many competing points it is apparent that but little traffic would move from Ironaton and Shelby on a substantially higher rate. Recognizing this fact, and that both points are dependent upon it for transportation, the Louisville & Nashville reestablished from Ironaton and Shelby the 75-cent rate to Chattanooga in order to permit the furnaces at those points to compete at Chattanooga with other furnaces in the Birmingham district taking the 75-cent rate over other routes. As we have said, the rates of 75 cents to Chattanooga and of 80 cents to Boyce were made applicable only through Gadsden in connection with the Tennessee, Alabama & Georgia Railroad. This arrangement is not satisfactory to the complainants, who ask that the Commission require the reestablishment of the 75-cent rate to both points over all the routes, as was formerly the case. The distances to Chattanooga from

Ironaton and Shelby over the several routes are shown in the following table:

Route.	Via—	From Ironaton.	From Shelby.
Southern Ry.....	Anniston, Ala.....	164	216
Alabama Great Southern R. R.....	Attalla, Ala.....	143	196
Tennessee, Alabama & Georgia R. R.....	Gadsden, Ala.....	143	196
Nashville, Chattanooga & St. Louis Ry.....	Cartersville, Ga.....	202	265

Upon a careful examination of the situation as disclosed by the record we find and conclude that the route over the Louisville & Nashville and Tennessee, Alabama & Georgia railroads affords an adequate service for all the traffic offered, and that no necessity or justification has been shown of record for requiring the establishment of the 75-cent and 80-cent rates over any other routes.

Under the 75-cent rate to Chattanooga in connection with the Tennessee, Alabama & Georgia Railroad the ton-mile earnings per gross ton are from Shelby 3.8 mills and from Ironaton 5.2 mills, or 3.4 mills and 4.7 mills per net ton, respectively. Under the \$1.15 rate the ton-mile revenue is but 7.1 mills per net ton on the haul from Ironaton and 5.2 mills on the haul from Shelby. Other than a showing by the complainants that the rate of 75 cents a gross ton has been maintained for several years from a majority of the pig-iron producing points in the Birmingham district to Chattanooga and Boyce over distances which are not materially less than the distance from Ironaton, and that the rate now applies over all routes except in connection with the Louisville & Nashville, no testimony was offered by the complainants tending to show any unreasonableness in the \$1.15 rate. When it is considered that a two-line haul is involved and that one of the participating carriers is barely able to pay its operating expenses, and that the expense of delivery which is absorbed by this carrier is stated of record to average \$3.50 per car, the rate of \$1.15 can not be considered to have been unreasonable, and we so find. Whether under the circumstances shown of record it was discriminatory and resulted in damage to the complainants is another question. This brings us to a consideration of the claims for reparation, for not only are the complainants seeking the reestablishment of the 75-cent rate to both Chattanooga and Boyce over all routes, but they are demanding reparation on that basis on all shipments upon which the \$1.15 rate, or any higher rate, was paid.

The record shows that one car consigned to the Chattanooga Plow Company moved on January 26, 1914, from Ironaton through Cartersville and over the Nashville, Chattanooga & St. Louis Railway, and that charges were assessed upon it at the class N rate of 20 cents

per 100 pounds. As this car was delivered to the Louisville & Nashville without routing instructions, it was the duty of that carrier to send it over the cheapest available route. This it did not do. The lowest rate then applicable was the combination rate of \$1.15 per ton, upon which basis the proper charge was \$48.30. The charges assessed were \$188.16. It is our finding and conclusion that the complainant, having paid and borne the charges, was damaged in the sum of \$139.86 by the unlawful act of the Louisville & Nashville in misrouting the shipment, and that this amount should be refunded by that company to the Chattanooga Plow Company, with interest from February 28, 1914.

From June 20, 1913, to January 15, 1914, the lowest rate applicable from Ironaton and Shelby to Chattanooga was \$1.15 a ton and to Boyce 75 cents a ton; over all routes but one, as before stated, Chattanooga is intermediate to Boyce. While this relation of rates, not being protected by an application, was violative of the provisions of the fourth section of the act, it is not by itself a sufficient basis for an award of reparation. In *Nix & Co. v. S. Ry. Co.*, 31 I. C. C., 145, 149, we said:

The mere fact that the rates charged were maintained in violation of the fourth section of the act, while it may make the carrier subject to a prosecution under the act for the recovery by the government of the penalties prescribed for a violation thereof, does not in the absence of proof of damage to the shipper afford a basis for an award of reparation in his favor. *P. R. R. Co. v. International Coal Mining Co.*, 230 U. S., 184.

Is there then in this record "proof of damage to the shipper"? That question must be answered in the negative. The record shows that pig iron is usually purchased on a contract basis and shipped as needed. Because of their unexpired contracts certain of the complainants were obliged to obtain their supply of that commodity from the Shelby and Ironaton furnaces, although they could otherwise have made their purchases from 22 other furnaces and at a 75-cent rate, and from 5 furnaces at even lower rates. We have found the rate of \$1.15 not to be unreasonable. The mere fact that these complainants, because of outstanding contracts, were required to purchase their supply of pig iron at particular points can not be held to put a carrier under the obligation of moving the pig iron at less than a reasonable rate. Nor is it, in the face of a record completely failing to show that the rate of \$1.15 was unreasonable, a warrant for a finding that the complainants are entitled to reparation on the basis of any rate lower than a reasonable rate. This is especially true under the facts of the particular case now before us. Ironaton and Shelby are local points on the Louisville & Nashville, dependent entirely on that carrier for transportation facilities; and the record

shows, as we have stated, that the 75-cent rate to Chattanooga was restored from those two points only and in order that furnaces located there might compete with other furnaces in the Birmingham district taking the 75-cent rate. Nor would it necessarily follow, if damage had been proven, that the measure of the damage was the difference between the \$1.15 rate and the 75-cent rate. In *Hoover v. P. R. R.*, 156 Pa. St., 220, 244, the court, after stating that the amount of injury suffered is the measure of the single damages to be allowed, said:

But it does not at all follow that the amount of injury suffered is the difference in the rates charged. It might be, or it might not be, but, in any event, it must be the subject of proof.

This case was cited with approval in *P. R. R. Co. v. International Coal Co.*, 230 U. S., 184, 189.

But it is shown of record that no traffic moved to Boyce on a 75-cent rate over the rails of the Louisville & Nashville and Tennessee, Alabama & Georgia while the \$1.15 rate was in effect at Chattanooga. The case then falls within *Greenbaum Co. v. S. Ry. Co.*, 38 I. C. C., 715, where we said, page 718:

From the decision in the case cited it is apparent that in order to hold a carrier or carriers responsible in damages for unjust discrimination it must be affirmatively established, among other things, that traffic actually moved at the lower rate from the point alleged to have been unlawfully favored over the line of the carrier or carriers responsible for the discrimination.

It follows from what we have said that, with the exception of the single shipment misrouted by the Louisville & Nashville Railroad Company, there is no basis of record for an award of reparation in favor of any of the complainants. With respect to all other shipments the complaint must be dismissed. An appropriate order will be entered.

40 I. C. C.

No. 7161.
BARTLETT HAYWARD COMPANY
v.
BALTIMORE & OHIO RAILROAD COMPANY ET AL.

Submitted February 10, 1915. Decided June 13, 1916.

Charges collected by defendants for the transportation of various carload shipments of structural steel, lumber, and contractors' outfits from Baltimore, Md., to Grayland, Ill., found unlawful to the extent that they exceeded the charges that would have accrued at the flat rates applicable to the respective shipments from Baltimore to Chicago, Ill. Charges collected on contractors' outfits from Grayland to Baltimore in excess of charges accruing at the flat Chicago to Baltimore rate which would have been accorded other users of the Knickerbocker Ice Company private industry track, found unjustly discriminatory. Reparation awarded.

A. E. Beck for complainant.

O. W. Dynes and *J. N. Davis* for Chicago, Milwaukee & St. Paul Railway Company.

A. D. Bowie for Baltimore & Ohio Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the structural steel and engineering business, with its principal office at Baltimore, Md. By complaint, filed August 5, 1914, it alleges that the rates charged by defendants for the transportation between December 9, 1912, and December 26, 1913, of 84 carloads of structural steel, 3 carloads of lumber, and 2 carloads of contractors' outfits from Baltimore to Grayland, Ill., and of contractors' outfits from Grayland to Baltimore, were unreasonable and unjustly discriminatory. Reparation is asked.

The shipments to Grayland consisted of material for use in constructing a gas holder for the People's Gas Light & Coke Company at a point approximately equidistant from Mayfair, Ill., on the line of the Chicago & North Western Railway, hereinafter called the North Western, and Grayland, on the Chicago, Milwaukee & St. Paul Railway, the principal defendant, hereinafter called the Milwaukee, both within the switching limits of Chicago, Ill. Prior to the movement the Baltimore & Ohio Railroad, the initial carrier, quoted complainant the flat Chicago rates of 27 cents per 100 pounds

on the structural steel and contractors' outfits, and 22 cents per 100 pounds on the lumber, as applicable from Baltimore to Mayfair. Complainant arranged for delivery at Mayfair and consigned some 20 carloads to that point. The North Western, after delivering two or three of the shipments at Mayfair, refused to deliver any more, apparently because it had not the line haul or because of local objection to the erection of the gas holder at Grayland. Complainant then arranged for delivery to the Milwaukee at Galewood, Ill., in the Chicago switching district, and transportation thence to Grayland. Besides the Milwaukee's team tracks at Grayland, there are also private industry tracks owned by the Knickerbocker Ice Company, now the Consumers' Company, and complainant agreed to pay the Knickerbocker Ice Company \$2 per car for the privilege of having the shipments delivered on its industry tracks. The topography of the land made it more convenient for complainant to unload at that point. The shipments originally consigned to Grayland were moved by the Baltimore & Ohio Railroad from Baltimore to South Chicago and switched by the belt line to Galewood, and by the Milwaukee to the industry tracks of the Knickerbocker Ice Company. The Baltimore & Ohio Railroad assessed charges on the shipments at the flat Chicago rates of 27 cents per 100 pounds on the steel and contractors' outfits and 22 cents per 100 pounds on the lumber. The Milwaukee assessed additional charges for switching the shipments from Galewood to the industry tracks of the Knickerbocker Ice Company at Grayland at a commodity rate of 4 cents per 100 pounds on the steel, a distance class rate of 5.1 cents per 100 pounds on the contractors' outfits, and a distance commodity rate of 3.6 cents per 100 pounds on the lumber. Grayland is 5.9 miles from Galewood, and the rates legally applicable under the tariffs for this distance on the contractors' outfits and lumber were 4.2 cents per 100 pounds and 3.2 cents, respectively. But, in view of what follows, it is not material to determine whether the correct charges were collected for the movement from Galewood to Grayland.

The real question presented is whether under the tariffs in effect any charges other than those based on the flat rates in effect between Baltimore and Chicago were legally applicable.

Baltimore & Ohio Railroad tariff I. C. C. No. 11056, naming the rates on the commodities involved between Baltimore and Chicago, carried the following note in supplement No. 1:

NOTE 162.—Points covered by this note are located in the Chicago switching district and will be subject to Chicago rates or arbitraries higher and deliveries as published in Chicago switching tariff 20-C, I. C. C. 13 of L. A. Lowrey, agent.

Grayland is covered by this note and the directory of industries with private or individual sidetracks in the Chicago district as pub-

lished in Lowrey's tariff I. C. C. No. 15, and succeeding issues in force during the period involved lists the Knickerbocker Ice Company—Grayland—Chicago, Milwaukee & St. Paul. This tariff carried the following rule:

This directory is to be used in connection with joint tariff of terminal charges, rules and regulations No. 20-C, L. A. Lowrey's (agent) I. C. C. No. 13, supplements thereto and reissues thereof, and the facilities herein listed are available only as referred to in said tariff; also in connection with joint tariff No. 21-C, L. A. Lowrey's (agent) I. C. C. No. 12, supplements thereto and reissues thereof, applying on loaded cars between industries with individual or private sidetracks at such points in the Chicago district, as defined therein; also in connection with joint tariff of terminal and rail-and-lake No. 24, I. C. C. No. 1, Fred E. Signer (agent), I. C. C. No. 14, L. A. Lowrey (agent), supplements thereto and reissues thereof, and the facilities herein listed are available only as referred to in said tariffs.

Lowrey's tariffs I. C. C. Nos. 19 and 20, the succeeding issues to Lowrey's tariff I. C. C. No. 15, and in force during the period involved continue the above rule, but with proper reference to Lowrey's tariff I. C. C. No. 17, the succeeding issue to Lowrey's tariff I. C. C. No. 13. Lowrey's tariffs I. C. C. Nos. 13 and 17, effective July 10, 1912, and January 12, 1913, respectively, and during the period involved, provide the rate basis applicable to and from points on issuing carriers by way of junctions within the Chicago district. Lowrey's tariff I. C. C. No. 13 carried the following provision:

Wherever the term industries is used in this tariff, or as the same may be amended, same will be understood to mean industries as described in tariff 22-B, I. C. C. No. 11 (L. A. Lowrey, agent), supplements thereto and reissues thereof.

Lowrey's tariff I. C. C. No. 17 carries the same provision making appropriate reference to Lowrey's tariff I. C. C. No. 15, the succeeding issue to Lowrey's tariff I. C. C. No. 11. Lowrey's tariffs I. C. C. Nos. 13 and 17 provide for the application of Chicago rates from and to certain industries, including the Knickerbocker Ice Company at Grayland, when the rate from or to Chicago is $2\frac{1}{2}$ cents per 100 pounds or higher and the charges are \$15 per car or more. The Baltimore & Ohio Railroad tariffs name rates between Baltimore and Chicago and by participating as an issuing carrier in the Lowrey tariffs that carrier made and makes itself a party to the application of flat Chicago rates to and from Grayland, Knickerbocker Ice Company track.

Complainant contends that the shipments were actually delivered on the industry tracks of the Knickerbocker Ice Company at Grayland and that under the tariff provisions cited no charges should have been assessed in addition to those based on the flat Chicago rates. The Milwaukee, which assumed the defense, contends, on the

other hand, that the shipments were not consigned to or intended for the use of the Knickerbocker Ice Company and that, therefore, the flat Chicago rates were not applicable and that the charges collected were in accordance with the tariffs in effect.

The tariff provisions quoted provided for the application of the flat Chicago rates in effect between Baltimore and Chicago on shipments delivered at or made from certain industries or industry tracks named in the tariffs, including the tracks of the Knickerbocker Ice Company, at Grayland, and contain no limitation relative to the ownership or use of the shipments. This, moreover, was the interpretation placed upon the tariff by the agent of the Baltimore & Ohio Railroad at Baltimore. The situation presented is analogous to that disclosed in *Bruer Bros. Lumber Co. v. C., M. & St. P. Ry. Co.*, Docket No. 6420, where the defendant's tariff covering the switching of carload traffic in Minneapolis provided as follows:

Carload freight * * * from junctions with connecting lines to elevators, warehouses, or other industries on Chicago, Milwaukee & St. Paul Railway tracks, \$1.50 per car.

Because of the temporary disconnection of the industry track to which the \$1.50 charge was applicable several of the complainant's shipments were delivered on near-by industry tracks to which the \$1.50 switching charge also applied. The defendant carrier charged a rate of 2 cents per 100 pounds for the switching. We held that the charge of \$1.50 per car was legally applicable, saying that—

The tariff provision above quoted provides for that rate for the switching of cars to industries specifically named in the tariff, and, as stated, all the industries on which delivery of these cars was made were named in that tariff. The fact that these shipments, so delivered, were owned by complainant instead of by those industries is immaterial. The tariff does not make any distinction between shippers because of ownership * * *.

We find that the rates legally applicable on the shipments here involved which moved from Baltimore and were delivered on the industry tracks of the Knickerbocker Ice Company, at Grayland, were the flat Chicago rates then in effect, viz, 27 cents per 100 pounds on the structural steel and contractors' outfits and 22 cents per 100 pounds on the lumber; and that the charges collected were unlawful to the extent they exceeded the charges that would have accrued on that basis.

Effective September 30, 1913, in supplement No. 12 to Lowrey's tariff I. C. C. No. 17, an amendment covering the movement of shipments to or from industries within the Chicago district when from or to points outside of the Chicago district was made as follows:

RULE 8½. The rates named in tariff, as amended, to or from industries with private sidings will also apply on traffic for other parties using such facilities

for traffic connected with the business of the party listed in tariff 22-E, I. C. C. No. 20 (L. A. Lowrey, agent), supplements thereto and reissues thereof, as the party having the private siding.

This rule must not be construed as authorizing the use of individual or private sidetracks for general traffic which should be handled through the public facilities of the carrier.

This rule remained in effect until December 1, 1914, when, by supplement No. 16 to Lowrey's tariff I. C. C. No. 22, the Milwaukee was exempted from its operation.

The shipments of contractors' outfits from Grayland to Baltimore moved from the industry tracks of the Knickerbocker Ice Company during the period when this rule was in effect. They moved over the same lines as the shipments to Grayland and charges were collected at the same rates as on the contractors' outfits to Grayland. The record shows that the industry tracks of the Knickerbocker Ice Company were laid upon its own property, and that the entire expense of their construction, with the exception of the cost of the metal, was borne by the ice company. These shipments were in no way connected with the business of the Knickerbocker Ice Company, and were in the nature of "general traffic which should be handled through the public facilities of the carrier." Neither the rule quoted nor the previous rule is specifically assailed, nor does the evidence prove that the Milwaukee's switching charges or the total charges collected on the shipments from Grayland were unreasonable for the services performed.

The opposing parties discuss at length the legal right of carriers to deny to others than the actual owners thereof the use of private spur tracks of industries or to refuse to receive or deliver on such private industrial tracks shipments not intended for use by or in connection with the business of the owners. But this question is not properly before us, for regardless of its possible legal right to refuse such service the Milwaukee did receive and deliver all of the contested shipments on the ice company's track. If the carrier recognizes the right of a track owner to accord the use of its siding to one shipper the carrier must treat alike all users of the siding. Section 2 of the act expressly prohibits a carrier from charging greater or less compensation for a like and contemporaneous service dependent upon the individual served. *Wight v. U. S.*, 167 U. S., 512. We find that all charges assessed in addition to the Chicago rate on the shipments from Grayland to Baltimore were unjustly discriminatory within the meaning of section 2. Our findings are not intended, however, to declare the existence of the right asserted by defendants or to approve the practice of owners of industrial tracks of throwing open their tracks in such a way as to make them general terminal facilities, thus investing the owners with power to foster discrimination between shippers.

We further find that complainant made the shipments as described and paid and bore charges thereon at the rates herein found to have been unlawful; that complainant has been damaged to the extent of the difference between the charges paid and the charges which would have accrued at the rates herein found lawful; and that it is entitled to reparation with interest. The exact amount of reparation due can not be determined from the present record. Complainant accordingly should prepare a statement showing as to each shipment on which reparation is claimed the date of movement, point of origin, route, weight, car number and initials, rate applied, charges collected, and the amount of reparation due under our findings herein, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared by complainant and verified by defendants we will consider further issuing an order awarding reparation.

40 I. C. C.

No. 7516.
G. W. GREEN & SON
v.
SOUTHERN RAILWAY COMPANY ET AL.

Submitted September 10, 1915. Decided June 13, 1916.

Rates charged for the transportation of oak wagon hounds in the rough in carloads from Mocksville, N. C., to Woodstock, Ontario, found to have been unreasonable to the extent that they exceeded the rates contemporaneously applicable on oak lumber from and to the same points. Reparation awarded.

C. J. Green for complainant.

L. C. Stanley and *G. H. Fraser* for Grand Trunk Railway Company of Canada.

Walter A. Dunnett for Canadian Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are G. W. Green and C. J. Green, copartners, engaged in the lumber business at Kingsville, Ontario. By complaint, filed November 25, 1914, they allege that the rates charged by defendants for the transportation in February, 1909, and August, 1910, of 11 carloads of wagon material in the rough from Mocksville, N. C., to Woodstock, Ontario, were unreasonable. Reparation is asked and the establishment of reasonable rates for the future. The claim was presented to the Commission informally November 14, 1910.

The shipments consisted of pieces of rough sawn oak intended for manufacture into wagon hounds. They varied in length from 2½ feet to 5 feet and averaged about 2 inches by 3 inches in thickness. An inch cut from one side rendered them irregular in shape, but they had undergone no further process of manufacture. They were piled loose in box cars. Their average value was about \$300 per car. Pine lumber shipped from Mocksville is worth from \$250 to \$300 a carload. Loss or damage claims on the class of material shipped are negligible.

Five shipments moved February 16 and February 18, 1909, by way of the Southern Railway to Harriman Junction, Tenn., and the Cincinnati, New Orleans & Texas Pacific Railway to Cincinnati, Ohio; thence by way of the Cleveland, Cincinnati, Chicago & St. Louis Railway, the Wabash Railroad, and the Canadian Pacific Railway

to Woodstock, or the Cincinnati, Hamilton & Dayton Railway, the Pere Marquette Railroad, and the Canadian Pacific Railway, or the Cleveland, Cincinnati, Chicago & St. Louis Railway, the Michigan Central Railroad, and the Canadian Pacific Railway. The remaining six shipments moved August 8, August 9, and August 12, 1910, by way of the Southern Railway, the Philadelphia, Baltimore & Washington Railroad, the Northern Central Railway, the Pennsylvania Railroad, the Erie Railroad, and Grand Trunk Railway through Potomac Yard, Va., East Buffalo, N. Y., and Black Rock, N. Y. The routes through Cincinnati are hereinafter called the Cincinnati routes; the route through Black Rock, the Black Rock route. No joint rates were applicable to shipments of wagon material from Mocksville to Woodstock, and combination rates were charged: 52 cents per 100 pounds over the Cincinnati route; 50 cents over the Black Rock route. The 52-cent rate was based on the sixth-class rates to and from Lynchburg, Va., by virtue of rule 5 (b) of our Tariff Circular 18-A: 25 cents from Mocksville to Lynchburg; 17 cents to Detroit, Mich., and 10 cents beyond over the first two routes described through Cincinnati, and 17 cents to North Toledo, Ohio, and 10 cents beyond over the third route. The 50-cent rate applicable over the Black Rock route was composed of the sixth-class rates of 41 cents from Mocksville to Black Rock and 9 cents from Black Rock to Woodstock. A combination rate of 32 cents was applicable on oak lumber from Mocksville to Woodstock over the Cincinnati routes and a joint rate of 33.2 cents over the Black Rock route. Complainants contend that the rates applied were unreasonable to the extent that they exceeded the rates contemporaneously applicable on lumber, stating that before these shipments they had made numerous shipments of wagon material in the rough from Mocksville to Woodstock on which the rates on lumber were applied.

The rates charged were the legal rates over the routes of movement under the tariffs in effect when the shipments moved. Effective September 20, 1911, a joint rate of 34.4 cents was made applicable on wagon material, including hounds in the rough, from Mocksville to Woodstock over the Black Rock route, which was increased on November 25, 1914, to 34.5 cents and made to apply over two of the Cincinnati routes. A joint commodity rate of 34 cents is now in force on oak lumber over the Black Rock route, which rate is one-half cent less than the rate on hounds in the rough over the same route. There is no joint rate on lumber from Mocksville to Woodstock by way of Cincinnati, and the lowest combination rate is 36.6 cents, which is 2.1 cents higher than the corresponding rate on hounds in the rough. No evidence was submitted on behalf of the defendants.

We find upon all of the facts disclosed, following *Sligo Iron Co. v. St. L. & S. F. R. R. Co.*, 28 I. C. C., 616, that the rates assailed were unreasonable to the extent that they exceeded the rates contemporaneously in effect on oak lumber from Mocksville to Woodstock; that complainants made the shipments as described and paid and bore the charges thereon at the rates herein found unreasonable; that they have been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rates herein found reasonable, and that they are entitled to reparation with interest. The exact amount of reparation due can not be determined on the present record, and complainants should prepare a statement showing as to each shipment on which reparation is claimed the date of movement, points of origin and destination, car number and initials, route, weight applied, charges collected and date of payment, and the amount of reparation due under our findings herein, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared by complainants and verified by defendants we will consider the entry of an order awarding reparation.

The Michigan Central Railroad, which participated in the transportation of one of the shipments routed by way of Cincinnati, is not a party defendant, but is a party to the joint sixth-class rates applied on that shipment north of Cincinnati. Any order for reparation on that shipment will be directed against the participating carriers who are named as defendants, but the Michigan Central may join them in making reparation. The Northern Central Railway and the Erie Railroad, which were parties to the joint sixth-class rate of 41 cents applied from Mocksville to Black Rock on the shipments that moved through Black Rock, are not parties defendant. These carriers may similarly join the defendants in paying reparation.

An order for the future will be entered herein, subject, however, to any modification which may be rendered necessary by the conclusions reached in the general investigation now being conducted in the proceeding entitled *In the Matter of Rates on and Classification of Lumber and Lumber Products*, Docket No. 8131.

40 I. C. C.

No. 7530.
HUTCHINSON TRAFFIC BUREAU
v.
ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY ET AL.

Submitted May 1, 1915. Decided June 13, 1916.

Present group rates on flour in carloads from central Kansas points to points in New Mexico not shown to be unreasonable or unjustly discriminatory. Complaint dismissed.

T. A. Noftzger and *F. D. Stevens* for complainant.

S. H. Babcock for interveners.

A. A. Hurd and *T. J. Norton* for Atchison, Topeka & Santa Fe Railway Company.

J. C. La Coste for Chicago, Rock Island & Pacific Railway Company; Chicago, Rock Island & Gulf Railway Company; and El Paso & Southwestern system.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a voluntary association of individuals, corporations, and associations located at Hutchinson, Kans. By complaint, filed December 1, 1914, it alleges that defendants' rates for the transportation of flour in carloads from Hutchinson and other central Kansas points to destinations in New Mexico are unreasonable, unjustly discriminatory, and unduly preferential of mills in western Kansas and eastern Colorado. The Dodge City Milling & Elevator Company, the Lamar Milling & Elevator Company, and the La Junta Milling & Elevator Company, which have their principal offices at Denver, Colo., and mills at Dodge City, Kans., and Lamar and La Junta, Colo., intervened in favor of the adjustment attacked.

The grain and grain products district of Kansas and portions of Nebraska, Colorado, and Oklahoma is divided into three rate groups for shipments to New Mexico. The destination points are not grouped. Wheat is not grown extensively in the territory included in group 1 and the rates from that group are not assailed. Group 2 may be described as including a strip of territory in central Kansas and Oklahoma approximately 200 miles wide, extending westward from a line drawn approximately north and south through Chandler, Okla., Moline, Emporia, and McFarland, Kans., to and including a line drawn in a northwesterly direction through Kiowa, Preston, Offerle, Ness City, and Phillipsburg, Kans. Points in Oklahoma as

far south as Enid, Guthrie, and Oklahoma City are included and points as far north as Superior, Nebr. Group 3 comprises a strip of territory west of group 2 about 300 miles wide. It includes western Oklahoma and Kansas, except a small strip in northwestern Kansas west of Phillipsburg, on the Chicago, Rock Island & Pacific Railway, hereinafter called the Rock Island, and also includes Lamar, La Junta, and other points in eastern Colorado on the Atchison, Topeka & Santa Fe Railway, hereinafter called the Santa Fe. The line between group 2 and group 3 bisects the wheat-producing section of Kansas. Complainant's mills are located in group 2 in central Kansas; interveners' mills in group 3 in western Kansas and eastern Colorado. Prior to October 10, 1910, the dividing line between group 2 and group 3 was approximately 50 miles east of its present location. The present dividing line was drawn on that date following a conference in August, 1910, between the millers in the two groups and the defendants. The new line was understood to be only tentative unless it should prove satisfactory after a year's trial.

The issues presented are whether the rates on flour to New Mexico from group 2 are relatively unreasonable and unduly prejudicial in comparison with the rates from group 3. It is not alleged that the rates challenged are intrinsically unreasonable.

The rates on flour from group 2 range from 3 cents per 100 pounds to 5 cents higher than the rates from group 3 to points in New Mexico on the Rock Island to points in New Mexico south of Chappelle on the main line of the Santa Fe and to points east of Belen, N. Mex., to and including Vaughn, N. Mex. The rates from group 2 to points east of Vaughn in New Mexico and to Roswell, N. Mex., and other points on the Pecos branch of the Santa Fe, are approximately 5 cents less than the rates from group 3. The rates on wheat and various grain products from both groups to points in New Mexico on the Santa Fe from Lynn to Chappelle, inclusive, have been reduced and equalized, thereby partially removing the cause of the complaint. The following table shows the average distances, rates, and ton-mile earnings from representative points in both groups to representative points in New Mexico:

To—	From group—	Average distance.	Average rate per 100 pounds.	Average per ton-mile.
		<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Santa Fe.....	2	715	57.0	15.9
Do.....	3	441	49.4	22.4
Albuquerque.....	2	720	57.0	15.8
Do.....	3	490	50.8	20.7
Fort Sumner.....	2	571	50.0	17.5
Do.....	3	621	55.0	17.8
Roswell.....	2	619	42.0	12.5
Do.....	3	720	47.0	12.8

The rates maintained generally vary with the average distance from the point of origin to destination even though the points of origin are grouped. The distance from Hutchinson, in group 2, to Santa Fe, for example, is 621 miles. The rate on flour is 57 cents, which rate earns 18.3 mills per ton-mile. Comparative figures for shipments to Santa Fe from La Junta, Lamar, and Dodge City, in group 3, are as follows:

To Santa Fe, N. Mex., from—	Miles.	Rate per 100 pounds.	Revenue per ton-mile.
		Cents.	Mills.
La Junta, Colo.....	298	46	30.8
Lamar.....	351	50	28.4
Dodge City, Kans.....	501	52	20.7

Lower rates from La Junta and Lamar, points less distant from Santa Fe than Dodge City, are explainable by the observance of a distance scale of rates to these points as a maximum. The group rates from the three points to Santa Fe are the same, 52 cents. The real cause of the complaint is the fact that the line dividing group 2 from group 3 is drawn through the wheat belt. Mills in group 3 have a commercial advantage in that they can purchase wheat cheaper than complainants can purchase it, because the price of wheat in both groups is usually determined by the Kansas City market price less the freight rate to Kansas City. The rates on wheat from group 3 points to Kansas City are higher than the rates from group 2 points under the graduated scale of rates which defendants maintain. Because of this commercial advantage complainants would deny to group 3 millers the advantage in distance which they have to certain New Mexico points in the rates on flour. Four adjustments are offered in the alternative as fair.

The first adjustment calls for the abolition of the present group system of rates and the construction of rates upon a graduated scale. The present groups are extensive and rates constructed on a distance basis would entail reductions in some of the rates from the points nearest to destination and increases in many from the more remote points of origin if defendants' present average earnings are not to be curtailed. Defendants maintain a graduated scale of rates from both groups to Kansas City, Mo., which shows a slightly greater proportionate disparity between the rates from mill points in Kansas than exists in the group rates to New Mexico. The rate on flour from Emporia, on the eastern boundary of group 2, to Kansas City, for example, is 9 cents, while the rate from Offerle, on the western boundary of group 2, is 13.5 cents, a difference of 4.5 cents for a difference in distances of 199 miles. The average distance from group 2

to Albuquerque, N. Mex., a representative point, is 720 miles; the average distance from group 3, 490 miles, a difference of 230 miles. The average rates differ by 5 cents. These comparisons indicate that the present group system of rates to New Mexico tends to place a greater number of mill points on a parity than the graduated scale cited in comparison. The group 2 rates to New Mexico compare favorably with the graduated scale to Kansas City, where it is observed that the distances from group 2 points are greater to New Mexico than to Kansas City. The establishment of a graduated scale would not give the relief sought, as disparities would still exist between the rates from the mills. Between Hutchinson, in group 2, for example, and La Junta, Lamar, and Dodge City, in group 3, the distances vary from 120 miles to 323 miles.

The second adjustment suggested is to group all points in Kansas into a single group, thereby ignoring the rates from points in Oklahoma and Nebraska, which are now either in group 2 or group 3. It is shown in favor of thus enlarging the group that the entire Kansas wheat belt is included in a single group for rates to points in California, Arizona, Nevada, Utah, and Colorado. But the groups maintained for shipments to more remote destinations generally are larger than the groups maintained for shipments to nearer destinations. The points of origin and destination here involved are in states almost contiguous, and ordinarily the rates from all points in one state to points in an adjoining state are not the same. The reason for the single group maintained from Kansas points to Colorado common points is not in evidence.

The third adjustment is to draw the boundary line between group 2 and group 3 through points east of the wheat-growing section in Kansas. This would place the mill points in central and western Kansas and eastern Colorado upon the same basis. But it would deprive the mills now in group 3 of the advantage of their location 100 miles to 300 miles nearer certain destinations than mills in group 2 and would place them on a parity with mills in group 2 to more remote points to which the rates are now higher from group 3. This adjustment is similar in principle to the second proposed adjustment.

Complainant's fourth proposal is to draw the dividing line between group 2 and group 3 along the western boundary line of the state of Kansas. This would enlarge a group of points of origin in one state on traffic to points in a near-by state and ignore differences in distance of more than 200 miles between points of origin.

It is difficult to determine which of these adjustments complainant would prefer. All of them would be attended by greater inequalities than the advantages predicted for complainant. A witness for defendants suggested that if any change is to be made in the present

grouping a division of the territory of origin into more groups would be the more logical course. Defendants are willing to make any fair adjustment of the present rates, but contend that the present group system is the fairest possible for the mills in the two groups and that an extension of group 2 would be unjust to mills in group 3 in that it would deprive them of the slight advantage which they now enjoy in the sale of their products in a limited market territory in competition with mills in group 2.

We have held repeatedly that it is not our function to overcome commercial disadvantages of individuals or localities by the adjustment of transportation charges. While some readjustment of these large groups might result in a more consistent and equitable rate adjustment, the plans suggested by complainant would not, we think, effect any such result. We find upon all of the facts disclosed that complainant has not shown that the group rate adjustment assailed is either unreasonable or unduly prejudicial. The complaint accordingly will be dismissed.

40 I. C. C.

No. 8230.
WILLIAMS STAVE COMPANY
v.
**MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAM-
SHIP COMPANY.**

Submitted November 25, 1915. Decided June 13, 1916.

Charges collected for the transportation of seven carloads of stave bolts from Beggs, Dubuisson, Garland, and Stewart, La., to Whiteville, La., for milling and reshipment over defendant's line to Constable Hook, N. J., found to have been unreasonable and unduly prejudicial. Reparation awarded.

Emerson Bentley for complainant.

J. E. Carter for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of staves at Alexandria, La., and, formerly, in operating a mill at Whiteville, La. By complaint, filed August 5, 1915, it alleges that the rate of 5 cents per 100 pounds charged by defendant for the transportation from Beggs, Dubuisson, Garland, and Stewart, La., to Whiteville of seven carloads of stave bolts milled at Whiteville and reshipped as staves to Constable Hook, N. J., between September 16, 1913, and October 2, 1913, inclusive, was excessive, unreasonable, and unjustly discriminatory. Reparation is asked.

Beggs, Dubuisson, Garland, and Stewart are local stations on defendant's line, less than 15 miles from Whiteville. The shipments aggregated 406,390 pounds and charges were collected in the sum of \$203.19 at a rate of 5 cents per 100 pounds, minimum 30,000 pounds. The bolts were manufactured into staves at Whiteville and reshipped in November and December, 1913, to Constable Hook.

For several years prior to September 10, 1913, defendant maintained to Whiteville, Alexandria, Port Barre, La., and other points on its line a net distance rate of 3½ cents per 100 pounds, minimum 50,000 pounds, for 30 miles or under, on stave bolts to be manufactured at transit points and subsequently reshipped in the form of staves. This rate could not be used in waybilling charges to transit points, but on presentation of satisfactory evidence of manufacture and reshipment over defendant's line the difference between a rate of

5 cents per 100 pounds applicable to transit point and the 3½-cent net rate would be refunded. Effective September 10, 1913, the net rate was canceled to all points, but a net distance rate of 2 cents per 100 pounds, minimum 50,000 pounds, for 25 miles or under was established by defendant to Alexandria and Port Barre on stave bolts to be manufactured at these points and subsequently reshipped as staves. This 2-cent rate was established to Whiteville October 19, 1913, and is still in effect. Whiteville, Alexandria, and Port Barre apparently are the only points on defendant's line at which staves were manufactured in 1913. The record does not disclose why the 2-cent net rate was not established to Whiteville on the date it was established to Alexandria and Port Barre, but apparently the omission was inadvertent. It has been the practice of other carriers operating in the same territory as defendant to maintain to Louisiana milling points on their lines net rates on stave bolts to be manufactured and subsequently reshipped in the form of staves. The net rates now maintained by defendant are substantially the same for like distances as those maintained by the other carriers. Defendant expresses willingness to make reparation on the shipments on the basis of the 2-cent rate, the offer indicating that defendant considered the rate assailed too high. Five of the shipments weighed more than 50,000 pounds each, the minimum prescribed under the 2-cent rate. The other two weighed 42,300 and 40,320 pounds, respectively.

The application of the net rate and milling rule to the shipments can not be regarded in the same light as a newly established transit arrangement and we find that the charges collected from Beggs, Dubuisson, Garland, and Stewart to Whiteville were unreasonable and unduly prejudicial to the extent that they exceeded the charges that would have accrued at a rate of 2 cents per 100 pounds, minimum 50,000 pounds, which we find reasonable; that complainant made the shipments as described and paid and bore the charges thereon herein found unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges herein found reasonable; and that it is entitled to reparation in the sum of \$118.44, with interest from March 30, 1914. An order awarding reparation will be entered, but as the rate basis found reasonable has been in effect since October 19, 1913, no order will be entered for the future.

No. 8338.
PORTLAND CHAMBER OF COMMERCE
v.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
ET AL.

Submitted November 20, 1915. Decided May 29, 1916.

Defendants' baggage rules providing extra charges on pieces of baggage, any dimension of which exceeds 45 inches, not found to be unreasonable or unjustly discriminatory as applied to sample cases of brooms more than 45 inches long. Complaint dismissed.

William C. McCulloch for complainant.

E. L. Bevington for defendants.

O. C. Spencer for Spokane, Portland & Seattle Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

This complaint was filed September 23, 1915, by the Portland Chamber of Commerce on behalf of one of its members engaged in the manufacture of brooms. The allegations are that defendants' excess baggage rules subject manufacturers of brooms at Portland, Oreg., to unreasonable and unjustly discriminatory charges for the transportation of flexible sample broom cases as baggage between Portland and points in Washington, Idaho, and Montana.

The sample cases involved measure 59 inches in length and 10 inches by 12 inches at the base. They contain six brooms and weigh filled 20 pounds. Defendants' baggage rules provide that—

for any piece of baggage any dimension of which exceeds 45 inches, there will be a charge for each inch in excess of 45 inches for each such dimension equal to the charge for 5 pounds of excess weight.

Sample whips in flexible cases not exceeding 90 inches in length, 12 inches in diameter at the base, or 100 pounds in weight are excepted from this rule and are checked and transported in baggage cars as part of the passenger's baggage allowance. Before the above rule was established June 1, 1913, no charge was made for transporting sample cases of brooms as baggage unless the personal baggage weight allowance of 150 pounds was exceeded. Since the establishment of the rule a charge equal to 70 pounds of excess baggage has been exacted on each such sample case of brooms. The excess

baggage charge on one of these cases from Portland to Seattle, Wash., for example, is 50 cents. A manufacturer of ordinary house brooms at Portland testified that the operation of the rule prohibits the carriage of full length brooms as samples, and has compelled him to saw off the handles of the brooms to come within the limits prescribed by the rule. The witness uses about 40 dozen brooms per year as samples, valued at \$5 per dozen on the average. He further testified that prior to the establishment of the rule full length sample brooms could be disposed of for approximately 75 per cent of their value, but that the short handle brooms, although occasionally worked over into an inferior grade of broom, are practically valueless, and that his loss, occasioned by the rule, is approximately \$200 per year. It was admitted that full length samples are unnecessary in the sale of brooms and the witness was unable to say whether the use of the short handle sample had resulted in any loss of business. The objection made to the rule is based primarily upon the diminished value of the samples occasioned by sawing off the handles.

Complainant contends that the services rendered by the carriers in transporting sample cases of whips and sample cases of brooms are similar in respect of transportation and that the exaction of excess baggage charges on sample brooms and not on whips is unjustly discriminatory. Defendants rely mainly upon *Regulations Restricting the Dimensions of Baggage*, 26 I. C. C., 292, wherein we had under consideration the very rule in question. It was shown in that case that whips range from about 4 feet in length to 8 feet; that it is impracticable to splice or joint them, as splicing and jointing destroys the best feature of a good whip, its "swing" or flexibility, and that it is impracticable successfully to sell whips by any other method than that of exhibiting the full length sample, unspliced and unjointed. We held that a rule with respect to sample cases of whips similar to that now published by defendants was reasonable and prescribed such a rule for the future. Defendants urge that an exception to the rule with respect to sample cases of brooms would be the entering wedge for the exception of sample cases of other articles, such as hoes, forks, crosscut saws, form charts, ladders, and similar articles, and would finally result in the very conditions which caused the rule in the first place. A witness for defendants exhibited several devices for splicing broom handles. These devices are not in general use, and complainant's witness asserted that they were either impracticable or that the cost was prohibitive.

We find that the rule in question is not shown to be unreasonable or unjustly discriminatory, and the complaint will be dismissed.

No. 8346.

J. V. STIMSON

v.

SOUTHERN RAILWAY COMPANY ET AL.

PORTION OF FOURTH SECTION APPLICATION No. 1548.

Submitted November 20, 1915. Decided June 13, 1916.

1. Defendants' rate of 10 cents per 100 pounds for the interstate transportation of carload shipments of lumber from Huntingburg, Ind., to Shelbyville, Ind., not found to have been unreasonable or unjustly discriminatory. Complaint dismissed.
2. Fourth Section Application No. 1548 denied to the extent that authority is sought in it to continue rates on lumber from Rockport, Rock Hill, Troy, Tell City, and Cannelton, Ind., to Shelbyville, Ind., which are lower than the rates contemporaneously applicable on like traffic from Huntingburg, Ind., and other intermediate points, to Shelbyville.

R. B. Coapstick for complainant.

E. R. Oliver for Southern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is engaged in the lumber business at Huntingburg, Ind. By complaint, filed September 25, 1915, he alleges that the rate of 10 cents per 100 pounds charged for the transportation of certain carloads of lumber from Huntingburg to Shelbyville, Ind., by an interstate route, during the period from October 14, 1913, to July 21, 1915, was unreasonable, unjustly discriminatory, and in violation of sections 1 and 4 of the act to the extent that it exceeded a rate of 8 cents per 100 pounds in effect prior to October 26, 1914, and a rate of 8.4 cents in effect since that date to Shelbyville from Rockport, Ind., and other more distant points on defendants' lines to which Huntingburg is intermediate. Reparation is asked.

Huntingburg is located in southern Indiana on the line of the Southern Railway. Shelbyville is located in eastern Indiana on the lines of the Cleveland, Cincinnati, Chicago & St. Louis Railway and the Pittsburgh, Cincinnati, Chicago & St. Louis Railway. The shipments consisted of oak lumber and moved as routed by complainant: Southern Railway to Louisville, Ky.; Illinois Central Railroad and Cleveland, Cincinnati, Chicago & St. Louis to destination. Switching service also was performed by the Illinois Central at Louisville. A rate of 10 cents per 100 pounds was charged. A rate

of 8 cents applied to Shelbyville from Rockport, Rock Hill, Troy, Tell City, and Cannelton, Ind., prior to October 26, 1914. A rate of 8.4 cents has applied since. Traffic from all of these points to Shelbyville necessarily moves through Huntingburg. That portion of Southern Railway Company Fourth Section Application No. 1548 in which authority is asked to continue rates on lumber from Rockport and the other more distant points to Shelbyville lower than the rates contemporaneously applicable on like traffic from Huntingburg and other intermediate points was heard with the complaint.

Huntingburg takes the same rates as Rockport and the other named point on many classes and commodities to and from various intrastate and interstate destinations. Rates on lumber appear to be an exception. Defendants explain that the rate from Evansville to Shelbyville was 8 cents, and was carried to meet the rate of the Chicago & Eastern Illinois Railroad, which is the short line, and that Rockport, Rock Hill, Troy, Tell City, and Cannelton being located on the Ohio River, it was deemed best for competitive reasons to place them on a rate parity with Evansville. The rate assailed is said to be controlled by the intrastate rates applicable from southern Indiana to Shelbyville.

Huntingburg is intermediate to Shelbyville from Evansville by way of the Southern Railway. Defendants admit that no transportation reason existed for higher rates from the intermediate point than applied from Rock Hill and the other more distant points named, and defendants' fourth section application will be denied to the extent that it is involved. The complaint does not allege a departure from the long-and-short-haul rule of the fourth section relative to traffic from Evansville, and that part of defendants' fourth section application which covers the Evansville adjustment has not been heard. Effective October 26, 1914, the rate from Evansville to Shelbyville was increased to 8.4 cents per 100 pounds.

Huntingburg is 180 miles from Shelbyville by the route of movement. Out of the 10-cent rate charged defendants absorbed two bridge tolls of 1 cent each at Louisville for crossing and recrossing the Ohio River and paid an intermediate switching charge of \$2.50 per car imposed by the Illinois Central. The rate from Louisville to Shelbyville is 8.4 cents for a distance of 101 miles. Defendants prefer not to move traffic by way of Louisville because of the bridge tolls and switching charges.

We find that while the rate assailed is not shown to have been unreasonable, it was and is discriminatory under section 4. There is no proof of discrimination otherwise and no reparation can be awarded. The complaint will be dismissed.

Appropriate orders will be entered.

No. 8559.
LAWLOR CYCLE COMPANY
v.
**CHICAGO, MILWAUKEE & ST. PAUL RAILWAY
COMPANY ET AL.**

Submitted March 13, 1916. Decided June 13, 1916.

Rates charged for the transportation of motorcycles in less than carloads from Milwaukee, Wis., and Middletown, Ohio, to Lincoln, Nebr., found to have been unreasonable to the extent that they exceeded one and one-half times the first-class rates. Reparation awarded.

G. M. Stephen for complainant.

Wymer Dressler for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainant is Nicholas Lawlor, engaged in the motorcycle business at Lincoln, Nebr., under the trading name of Lawlor Cycle Company. By complaint, filed December 24, 1915, he alleges that the rates charged by defendants for the transportation of motorcycles, in less than carloads, from Milwaukee, Wis., and for the transportation west of the Mississippi River of motorcycles, shipped in less than carloads from Middletown, Ohio, both to Lincoln, during the period from February 8, 1912, to February 13, 1913, were unreasonable and unjustly discriminatory. Reparation is asked. The claims were presented to the Commission informally February 2, 1914.

The charges assessed were based on two and one-half times the first-class rates as provided by the western classification in force at the time. In *Griffing v. C. & N. W. Ry. Co.*, 25 I. C. C., 134, and other cases in which the rating on motorcycles applicable in the same general territory was considered, we held that a rating of two and one-half times first class on motorcycles, in less than carloads, was unreasonable to the extent that it exceeded one and one-half times first class. Following these cases, we find, upon the facts of record in this case, that the charges collected were unreasonable to the extent that they exceeded the charges which would have accrued at one and one-half times the first-class rates which we find reasonable; that complainant made the shipments described in accordance with

the foregoing statement of facts and paid and bore charges thereon at the rates herein found unreasonable; that he has been damaged to the extent that the charges paid exceeded the charges that would have accrued at the rate herein found reasonable; and that he is entitled to reparation with interest. The amount of reparation can not be determined on the present record.

Complainant should prepare a statement showing as to each shipment on which reparation is claimed the date of shipment, points of origin and destination, route, weight, car number and initials, rate applied, charges collected, and the amount of reparation due under our findings herein, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared by complainant and verified by defendants we will consider the entry of an order of reparation.

As motorcycles in less than carloads have been rated one and one-half times first class in western classification for more than two years, no order for the future is necessary.

40 I. C. C.

No. 7764.

SUIZBERGER & SONS COMPANY OF AMERICA

v.

MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE
RAILWAY COMPANY ET AL.

Submitted September 13, 1915. Decided June 13, 1916.

Re-icing charge at Montgomery, Ala., on a less-than-carload shipment of cheese from Marshfield, Wis., to Pensacola, Fla., found to have been unreasonable. Reparation awarded.

W. R. Brown and E. W. Skipworth for complainant.

William Burger for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in buying and selling various commodities at Chicago, Ill., and Pensacola, Fla. By complaint, filed February 19, 1915, it alleges that the charge of \$4.11, collected by defendants for re-icing at Montgomery, Ala., a less-than-carload shipment of 100 boxes of cheese shipped from Marshfield, Wis., to Pensacola, was unlawful and unreasonable. Reparation is asked.

The shipment weighed 2,520 pounds and moved from Marshfield to Chicago on October 15, 1914, by way of the Minneapolis, St. Paul & Sault Ste. Marie Railway. It was reloaded with other shipments at Chicago and forwarded under refrigeration by way of the Chicago & Eastern Illinois Railroad to Evansville, Ind., where it was turned over to the Louisville & Nashville Railroad, the delivering carrier. The icing charges up to Evansville were absorbed by the Chicago & Eastern Illinois. Since 1909 the Chicago & Eastern Illinois, in connection with the Louisville & Nashville, has operated a refrigerator car service for perishables in less than carloads to points on or reached by the Louisville & Nashville. Some shipments were removed from the car and others added at Evansville, Nashville, Tenn., and Birmingham, Ala. The Louisville & Nashville placed 1,500 pounds of ice in the bunkers at Nashville and 2,500 pounds at Montgomery. When the car left Montgomery it contained 3,118 pounds of perishables, complainant's shipment constituting 81 per cent of the total weight. Charges were collected on the shipment in the sum of \$21.92 at the less-than-carload through rate of 87 cents per 100 pounds, plus

\$4.11 for re-icing at Montgomery. The shipment was specifically routed by complainant, and the rate applicable was a combination rate of \$1.15 per 100 pounds, composed of a rate of 53 cents to Evansville and a rate of 62 cents from Evansville to Pensacola. The shipment was undercharged \$7.06. The Louisville & Nashville attempted to prorate the cost of the ice at \$3.50 per ton, or \$4.38 for the ton and a quarter furnished, among the several shipments of perishables in the car when it left Montgomery. If the tariff provided for such a charge, complainant should have been charged \$3.54 instead of \$4.11. No charge is shown for the ice furnished at Nashville, possibly because the aggregate weight in the car at that point exceeded 10,000 pounds. The Louisville & Nashville tariff provided for the absorption of icing charges on less-than-carload shipments when the total weight exceeded that amount. Complainant contends that the re-icing charge at Montgomery was assessed without tariff authority and was unlawful and unreasonable. The reasonableness of the rate is not attacked.

The tariff naming the rate on cheese from Evansville to Pensacola also authorized the assessment of re-icing and other charges as provided in the tariffs of participating carriers. The Louisville & Nashville was a participating carrier and its tariff, I. C. C. No. 12658, contemporaneously in effect and governing the shipment, named rates, rules, and regulations governing terminal arrangements at Montgomery and Nashville applicable to traffic in "carloads unless otherwise specified." First revised page 244 provided a re-icing charge of \$3.50 per ton at Montgomery. The tariff provided for the application of this charge to "shipments of perishable freight," but made no specific reference to less than carloads. The Louisville & Nashville insists, however, that the provision concerning "carloads" related solely to switching service and was inapplicable to the shipment involved, but the tariff shows that the provision was not so narrow in its application; the icing charge applied only to carloads, it was not applicable to less-than-carload shipments. The only question left, therefore, relates to the reasonableness of a charge not covered by a filed tariff.

We held in *Memphis Freight Bureau v. K. C. S. Ry. Co.*, 17 I. C. C., 90, that where a transportation service has been rendered for which no tariff authority exists and where the shipper has paid the sum demanded by the carrier for the service, the question as to what would have been a reasonable charge for the service is within our jurisdiction and that we can order the repayment of whatever the carrier has collected over and above such a reasonable charge.

We find that the icing charge assailed was assessed without tariff authority and that a reasonable charge would have been \$3.54; that

the shipment was made as described; that complainant paid and bore the re-icing charge herein found to have been unreasonable; and that it has been damaged and is entitled to reparation from defendant, Louisville & Nashville Railroad Company, in the sum of 57 cents, with interest from October 26, 1914.

An appropriate order will be entered. Defendant Louisville & Nashville Railroad Company should revise its tariffs to indicate clearly in what instances and under what conditions refrigeration will be furnished for less-than-carload freight. Where such service is rendered and charges are assessed therefor the tariff should so provide, stating the amount of the charges.

No. 8366.

BERRY COAL & COKE COMPANY

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
COMPANY ET AL.

Submitted January 25, 1916. Decided June 13, 1916.

Rate charged on a carload of coal from Chicago, Ill., to Oakdale, Cal., not found to have been unreasonable. Complaint dismissed.

Frank H. Curran for complainant.

D. L. Meyers for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the coal and coke business, with its principal office in Chicago, Ill. By complaint, filed September 27, 1915, it alleges that the rate charged by defendants for the transportation of a carload of coal from Chicago to Oakdale, Cal., in March, 1915, was unreasonable and in violation of the long-and-short-haul rule of the fourth section. Reparation is asked and the establishment of a reasonable rate for the future.

The shipment weighed 62,000 pounds and was moved by the Chicago, Rock Island & Pacific Railway and the Atchison, Topeka & Santa Fe Railway. Charges were assessed at the rate of 46 cents per 100 pounds. A rate of 42 cents per 100 pounds applied on coal

from Chicago to Stockton, Cal., a more distant point and recognized at the time as a Pacific coast terminal. Complainant contends that Oakdale is intermediate to Stockton by way of defendants' lines.

Oakdale is the terminus of a branch line of the Atchison, Topeka & Santa Fe Railway coast lines, 7 miles long, that begins at River Bank, Cal., 25 miles south of Stockton. Shipments from Chicago to Stockton by way of the Santa Fe would not pass through Oakdale and there was therefore no departure from the long-and-short-haul rule. Oakdale is intermediate to Stockton over other routes. The rate to Oakdale was constructed by adding a back-haul arbitrary of 4 cents per 100 pounds to the Pacific coast terminal rate of 42 cents. In *Commodity Rates to Pacific Coast Terminals*, 32 I. C. C., 611, the carriers were authorized, because of water competition at Pacific coast terminals, to establish certain carload commodity rates to the terminals lower than the rates to intermediate points, and in Fourth Section Order No. 124, entered April 30, 1915, when our second supplemental report in the case cited was issued, 34 I. C. C., 13, they were authorized to construct rates on coal to intermediate points by adding to the terminal rates not more than 75 per cent of the local rate from the nearest terminal to destination provided that the rates on coal to the intermediate points should not exceed 5 mills per ton-mile. Stockton was eliminated as a terminal point and the present rate on coal from Chicago to Oakdale is based on the rate to San Francisco plus 75 per cent of the local rate back. The rate is 48 cents per 100 pounds. Oakdale is about 2,424 miles from Chicago, and the 46-cent rate assailed yielded 3.7 mills per ton-mile. No evidence was adduced that the rate was intrinsically unreasonable.

We find that the rate assailed is not shown to have been unreasonable, and the complaint will be dismissed.

40 I. C. C.

No. 7820.

ROBINSON CLAY PRODUCT COMPANY

v.

AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY
ET AL.

Submitted November 26, 1915. Decided June 13, 1916.

Carload shipment of sewer pipe from Akron, Ohio, to Chicago, Ill., found to have been misrouted. Reparation awarded.

Alvin Hill and *C. E. McLean* for complainant.

William Simpson for Akron, Canton & Youngstown Railway Company.

F. W. Flott for Akron, Canton & Youngstown Railway Company and New York, Chicago & St. Louis Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of clay products at Akron, Ohio. By complaint, filed March 8, 1915, it alleges that defendants misrouted a carload of sewer pipe shipped October 17, 1913, from Akron to Chicago, Ill., to complainant's damage in the sum of \$24, demurrage and drayage charges. Reparation is asked.

The bill of lading covering the shipment showed Whitney & Ford as consignees, "43rd St. Team Track, Chicago, Ill.," as the destination, "W. & L. E.—I. C." as the route, and bore the notation "Ntfy. at Cottage Grove Ave." The shipment was made by complainant to fill an order received by it from N. A. Williams Company, of Chicago, and in accordance with a trade custom the latter company was shown on the bill of lading as the consignor. The waybill issued by the Akron, Canton & Youngstown Railway Company at Akron provided for carriage over its line to Mogadore, Ohio, by the Wheeling & Lake Erie Railroad to Bellevue, Ohio, and by the New York, Chicago & St. Louis Railroad, hereinafter called the Nickel Plate, thence to Chicago. The destination was shown as "43rd St. Team Tracj, Chicago, Ill." As no reference was made to Illinois Central delivery in the waybill and the word "track" was misspelled "tracj," the Nickel Plate assumed, it is stated, that the latter spelling was some symbol and that the last two letters designated Chi-

chicago Junction Railway. Therefore the car was delivered to the Chicago Junction Railway for switching to its Forty-third street team track. It is admitted, however, that the bill of lading carried correct and sufficient instructions for delivery at the Forty-third street team track of the Illinois Central Railroad. Misrouting also is admitted, and the issue presented is whether the misrouting resulted in damage to complainant to the extent alleged.

The consignees had purchased the sewer pipe to be delivered on the Illinois Central tracks and looked to N. A. Williams Company to effect the proper delivery. A witness for N. A. Williams Company testified that the company was not advised of the arrival of the shipment until \$4 demurrage had accrued, when a telephone message was received from a representative of the Nickel Plate who requested information as to the disposition of the car, stating that it was on the Forty-third street team track of the Chicago Junction Railway and that the consignee had been notified but had not responded. Witness, who received the message, advised the Nickel Plate that the bill of lading called for delivery at the Forty-third street team track of the Illinois Central and that delivery would not be accepted on the Chicago Junction Railway. On the following day he received another telephone message from the same source to the effect that the Nickel Plate had received corrected billing showing Illinois Central delivery but that the delivery desired would require a back haul and could not be effected in less than a week or 10 days. Under these circumstances N. A. Williams Company agreed to unload the car on the Chicago Junction Railway and did so within two days. No documentary evidence appears of record, but it is stated that transactions of this character were customarily carried on over the telephone. The Nickel Plate denies that it was requested to make delivery of the car on the Illinois Central Railroad, but its testimony is of an entirely negative character. The N. A. Williams Company drayed the shipment with its own teams for a distance of about 5 miles to the place of business of Whitney & Ford on Cottage Grove avenue, about half a mile from the Forty-third street team track of the Illinois Central. Demurrage charges of \$7 which had accrued were paid to the Chicago Junction Railway by N. A. Williams Company and the sum of \$24, including the demurrage charges and \$17 for drayage, was charged back to and was ultimately borne by complainant. It is admitted that \$17 represents a reasonable charge for drayage in addition to the charges that would have been paid if delivery had been made on the Forty-third street team track of the Illinois Central Railroad. It also appears that the car could have been switched from the Chicago Junction Railway to the Illinois

Central at a switching charge of \$9, and defendants contend that this is the only amount for which they are responsible, as all greater expense could have been avoided.

We are of the opinion that the notation on the waybill "43rd St. Team Tracj" did not justify the Nickel Plate in delivering the car to the Chicago Junction Railway, as the final letter was obviously a clerical error. The expression "43rd St. Team Track" by itself would not have sufficed for Illinois Central delivery, as there are a number of roads having Forty-third street team tracks in Chicago. But that only made it the duty of the Nickel Plate to hold the shipment and demand instructions from the initial carrier. Instead of pursuing that course, or of attempting to ascertain from the consignee the delivery desired, the Nickel Plate assumed the responsibility of delivering the shipment to the Chicago Junction Railway. It is, therefore, responsible to the shipper for the resulting damages, notwithstanding the error of the initial carrier. *Duluth & Iron Range R. R. Co. v. C., St. P., M. & O. Ry. Co.*, 18 I. C. C., 485.

We find that the shipment was misrouted and that the drayage and demurrage charges would not have accrued if the shipment had moved in accordance with the routing instructions given. We further find that complainant made the shipment as described; that it has been damaged to the extent of the difference between the charges paid and borne and the charges that would have accrued if the shipment had been forwarded in accordance with the routing instructions given; and that it is entitled to reparation by the Nickel Plate in the sum of \$24, with interest from December 15, 1913. An order will be entered accordingly.

40 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 724.
COAL AND COKE FROM BON AIR, TENN., AND OTHER
POINTS.

Submitted April 17, 1916. Decided June 29, 1916.

Over the protest of the Southern Railway Company but acting under its concurrence, the Nashville, Chattanooga & St. Louis Railway reduced rates on bituminous coal from its Tennessee mines to Southern Railway stations in Georgia and changed the relationship between said mines and the Southern's Tennessee mines. The Southern withdrew its concurrence in such rates, necessitating their cancellation. The resulting combination rates held not to have been justified, but the Southern found to have justified increased rates in the amounts of those in effect prior to the reduction referred to.

Claudian B. Northrop and *Alex. M. Bull* for Southern Railway Company.

Francis B. James for Southern Appalachian Coal Operators' Association, intervener.

J. N. Sharp for Stearns Coal & Lumber Company.

William Nixon for Brushy Mountain Coal Mines.

Sizer, Chambliss & Chambliss for Bon Air Coal & Iron Company and other protestants.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

Following a disagreement between the Nashville, Chattanooga & St. Louis and Southern railways as to the amount of joint rates on bituminous coal from mines in Tennessee on the former to destinations in Georgia, a tariff was filed canceling the joint rates in effect from the mines in question to destinations in Georgia on the Southern Railway and providing that joint rates to other Georgia points will not apply in connection with the Southern Railway. The operation of the tariff is suspended, by appropriate orders, until August 4, 1916.

The mines referred to at the hearing are embraced in the Whiteside, Whitwell, Tracy City, and Bon Air groups. Most of them are on branch lines and circuitous hauls are necessary. The distances to Chattanooga, Tenn., taking a representative point in each group, are 14 miles from Whiteside, 52 miles from Whitwell, 85 miles from Tracy City, and 151 miles from Bon Air. Atlanta, Ga., is the principal junction for the interchange of this coal traffic. The other junctions

are Chattanooga and Rome and Dalton, Ga. Rates and differentials are stated in cents per net ton.

For more than 20 years prior to September 2, 1914, the rates from the Whiteside group to destinations in Georgia were either the same as from Birmingham, Ala., or 15 cents under Bon Air, whichever made lower. The rates from Bon Air were the same as the Southern Railway carried from its Coal Creek group, and Tracy City and Whitwell were made 5 and 10 cents, respectively, under those rates. Coal Creek takes rates differentials higher than Birmingham. Effective September 2, 1914, the alternate basis from Whiteside was discontinued and rates therefrom were made uniformly 15 cents under Bon Air. Effective April 17, 1915, the Nashville, Chattanooga & St. Louis, over the objection of the Southern, but acting under the latter's concurrence, made certain reductions from its mines to destinations in Georgia. Its purpose was to divorce its mines from any relationship with Coal Creek and to substitute a relationship with Birmingham, the basis adopted being to make rates from Whiteside to points within approximately the same distance from Chattanooga and Birmingham the same as from Birmingham but not higher than from the lowest rated mine on the Cincinnati, New Orleans & Texas Pacific, which happens to be Rathburn, Tenn., and to make Whitwell and Tracy City 5 cents, and Bon Air 10 cents over Whiteside. The rates from Rathburn to Georgia destinations, it appears, are in no case lower than those applicable from Birmingham. To a majority of the Southern's stations in Georgia, Coal Creek rates are 15 cents higher than those from Birmingham, and consequently the reduction from Bon Air and Tracy City amounted to 5 cents per ton. This made Bon Air 5 cents and Tracy City 10 cents under Coal Creek. To a few points the reductions were very much greater. The rates to Columbus and Albany, for instance, were reduced 33 and 35 cents, respectively. No general change was made in the relation of Whiteside and Whitwell to Coal Creek, although certain of the rates from the former two groups were reduced. The Southern made repeated requests, without avail, upon the Nashville, Chattanooga & St. Louis to cancel the reduced rates on the ground that they were unduly low and prejudiced mines on its own lines, and finally withdrew its concurrence therein. Following this the suspended tariff was filed.

Throughout the hearing the relationship between Bon Air and Coal Creek was referred to as typical of the adjustment and will be so treated herein.

Neither of the respondents attempts to justify the assessment on this coal traffic of charges based on a combination of intermediate rates. The Southern contends for the restoration of the former relationship between Bon Air and Coal Creek by an increase in the

Bon Air rates to the basis in effect prior to April 17, 1915, and in this has the support of its operators at Coal Creek. The Bon Air and Tracy City operators, to whose pressure upon the Nashville, Chattanooga & St. Louis is due the reduction which resulted in the cancellation of joint rates, testified in support of the contention that the reduced rates from their mines should be continued in effect.

The coal mined at Bon Air is almost entirely steam coal and is competitive with Coal Creek steam coal. Practically none of the Bon Air coal has ever sold in Georgia for other than railroad fuel purposes. Prior to about 1909 considerable of it was sold to certain of the Georgia railroads, but since then these contracts have been lost to other mines reaching this territory by new or extended lines of the Louisville & Nashville, Carolina, Clinchfield & Ohio, and Virginia & Southwestern railways, principally of the Louisville & Nashville from southeastern Kentucky and eastern Tennessee. Although none of the Louisville & Nashville mines had rates lower than 5 or 10 cents over Coal Creek, and therefore over the former rates from Bon Air, they were nevertheless able, owing to newer operations, thicker veins, and lower cost of production, to undersell Bon Air.

The attitude of the Nashville, Chattanooga & St. Louis is not that its former rates from Bon Air were too high; it specifically asserts that they were reasonably and abnormally low. Its position is that in order to afford its operators an outlet for their coal in this territory, which they do not now have, it has a right to reduce its rates, even over the protest of its necessary connection, the Southern, provided it does not go below the cost of the service of transportation or require the Southern to accept lower divisions than the latter received under the old rates. It asserts that the reduced rates yield the cost of this service and something in addition. Its general freight agent testified that—

* * * I have no quarrel whatever with the Coal Creek adjustment. If there was a comparable condition of affairs as between our mines and mines in the Coal Creek district, I would heartily subscribe to that adjustment. The Coal Creek adjustment *per se* is a reasonable adjustment. It is not anything that ought not to be—considered strictly from the standpoint of a theoretical rate adjustment, there is no quarrel with it. But it goes, with us, beyond a theoretical rate adjustment, beyond a paper adjustment, and we are determined, if we can without losing money on the operation, to put these people into that section southeast of Atlanta, and we are going to do it if we can; and we will do it whether our connections concur or not.

The Southern contends that the departure from the former relationship subjects its own operators at Coal Creek to undue prejudice and disadvantage, a violation of law which it would not be justified in producing voluntarily, and which it should not be compelled to participate in against its will. Both this respondent and its oper-

ators at Coal Creek state that the competition which has excluded the Bon Air coal from these Georgia markets has also been felt by operators at Coal Creek. It does not appear to have been felt as strongly at Coal Creek as at Bon Air, as Coal Creek steam coal is still sold in these markets in considerable quantities; but it does appear to have affected equally with Bon Air the output of the Southern's Jellico group, from which there is a differential of 10 cents per ton over Coal Creek. The vein is thinner and the cost of production higher at Bon Air than at Coal Creek, and Bon Air coal is not of as high a grade as that mined at Coal Creek, having a greater ash content. The record indicates that up to the time the case was submitted the Coal Creek operators had not been damaged or the Bon Air operators benefited by the reduced rates.

As stated, Atlanta is the principal junction for the interchange of this coal traffic. The distance from Coal Creek to Atlanta is 265 miles, 35 miles less than from Bon Air. This distance in favor of Coal Creek is the minimum difference to points south and east of Atlanta, and to points on the Southern beyond Atlanta, coal from Coal Creek moves over a one-line route, while an additional carrier is necessary on coal from Bon Air. To Atlanta, the Coal Creek rate is \$1.35 and the rate from Bon Air has been reduced from that amount to \$1.30. The ton-mile earnings to Atlanta on the present rates are 5 mills from Coal Creek and 4½ mills from Bon Air.

As we understand it, there is no contention by any party, carrier or shipper, that the former rates from Bon Air were either unreasonable or that the relationship of rates from those and from competing fields was unduly discriminatory. The contention, in fact, is that although the Bon Air rates were the same as the Coal Creek rates, differences in distance and the number of carriers being disregarded, Bon Air coal did not sell at Georgia points, and the testimony shows that this is due to the quality and the cost of mining it. In other words, the Nashville, Chattanooga & St. Louis and its shippers did not attempt to show any violation of the act in connection with the former rates, but merely that the Nashville, Chattanooga & St. Louis mines were not able to ship under them, and that the reduced rates would not subject the Coal Creek mines to undue prejudice and disadvantage or injure the Southern. The contention of the Southern, in effect, is that it should not be compelled to continue its concurrence in rates which it considers unduly prejudicial to its own mines except upon a finding by the Commission that the former rates, which admittedly are not unreasonable, subjected the Bon Air and other Nashville, Chattanooga & St. Louis mines to undue prejudice and disadvantage.

The finding in *Coal to Kentucky Points*, 37 I. C. C., 194, is not controlling of the issues here presented. The proposed cancellation of joint rates in that case was the result of an attempt by one carrier to force its connection to increase joint rates, and thereby to destroy a long existing relationship between producing fields, whereas in the present case the Southern desired to continue a long existing adjustment, leaving dissatisfied shippers to present to this Commission, and have a full hearing upon, a complaint of what they considered to be a violation of a provision of the act, as provided in sections 13 and 15. The question of relationship would then be directly in issue and could be more satisfactorily considered and determined than in a proceeding of the present nature.

Without passing upon the question of the necessity for justification by the Southern of an increase to the former basis of joint rates decreased over its protest, we are of opinion, upon consideration of all of the facts of record, including the long maintenance of the parity of rates from the Bon Air and Coal Creek mines, and find, that while the cancellation of the joint rates has not been justified the Southern Railway Company has justified an increase in the rates from Nashville, Chattanooga & St. Louis mines to the amounts of the rates in effect prior to April 17, 1915. The tariff under suspension will be ordered canceled and the respondents required to maintain rates not higher than those in effect on April 16, 1915.

40 I. C. C.

No. 8345.
LOTT B. MALONE
v.
NEW YORK TELEPHONE COMPANY ET AL.

Submitted March 10, 1916. Decided June 23, 1916.

1. Telephone calls may be classified, and a through rate for one kind of service is not necessarily unreasonable merely because it exceeds an aggregate of intermediate rates for a different kind of service.
2. Through "particular person" rate of \$1.65 from Flushing, N. Y., to Canaan, N. H., composed of a rate of 15 cents for the first three minutes and 5 cents for each additional minute on calls from Flushing, N. Y., to New York City for beyond, and \$1.50 for the first three minutes and 50 cents for each additional minute on calls from New York City to Canaan, N. H., not proved unreasonable by a hypothetical through rate of \$1.55 between Flushing and Canaan composed of a 5-cent "two-number" rate from Flushing to New York City and a \$1.50 particular person rate from New York City to Canaan.
3. Through calls at combination rates require fewer terminal services than separate calls under the rates combined, and combination through rates that include charges for terminal service not performed are unreasonable.
4. Reasonableness of contract provision under which service of complainant was discontinued not decided.

Elkuns, Gleason & Proskauer for complainant.

R. V. Marye for New York Telephone Company.

D. A. Frank for American Telephone & Telegraph Company.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

Complainant is a resident of Flushing, Long Island, N. Y., and a subscriber for the telephone service offered by the New York Telephone Company. By complaint, filed September 25, 1915, he alleges that the charges assessed by defendants for two telephone conversations between his house in Flushing and Canaan, N. H., in October, 1914, were unreasonable, and that the suspension of his outgoing house service because of his refusal to pay the charges assessed also was unreasonable. A reasonable rate is asked, and reparation, particularly for the suspension of service, is sought.

Complainant called Canaan three times, once on September 22, 1914, when he conversed for seven minutes, again on October 9, 1914,

when he conversed for not more than three minutes, and finally on October 11, 1914, when he conversed for ten minutes. All three calls were over the wires of the New York Telephone Company from Flushing to Manhattan Borough, New York City; over the wires of the American Telephone & Telegraph Company from Manhattan to Greenfield, Mass.; and over the wires of the New England Telephone & Telegraph Company from Greenfield to Canaan. They were charged for at a rate of 15 cents for the first three minutes and 5 cents for every additional minute, from Flushing to Manhattan, and at a rate of \$1.50 for the first three minutes and 50 cents for every additional minute, from Manhattan to Canaan. Charges were assessed that aggregated \$3.85 for the first call, \$1.65 for the second, and \$5.50 for the third. The \$1.50 rate charged from Manhattan to Canaan was the established rate between those points for "particular person" calls, for which no charge is made unless the particular person desired is located and responds, and hereinafter called toll calls. The 15-cent rate charged to Manhattan was the established charge from Flushing to Manhattan on toll calls for beyond.

A "two-number" service rate of 5 cents applied from Flushing to Manhattan that had been established July 1, 1913, pursuant to an order entered by the Public Service Commission of New York on June 12, 1913. Two-number calls are the ordinary calls by number that are charged for if the call is answered by anyone, and are hereinafter called local calls.

Complainant refused to pay the charges assessed, on the ground that he should not have been charged more than the sum of the local rate applicable from Flushing to Manhattan and the toll rate from Manhattan to Canaan. A controversy ensued, and on August 17, 1915, complainant's outgoing service was suspended. Complainant thereupon, August 23, 1915, tendered defendants his check for \$9.25 for the three calls, but defendants refused to accept it, demanding payment of the full sum of \$11 due at the rates charged.

Complainant contends that the rate charged was *prima facie* unreasonable to the extent that it exceeded the sum of the 5-cent local rate to Manhattan and the \$1.50 toll rate beyond and violated the aggregate of intermediate rates rule of the fourth section. The total rate charged is assailed, but particularly the Flushing-Manhattan component. The 5-cent local rate from Flushing to Manhattan is the only evidence adduced by complainant.

Defendants argue that the rules of the fourth section are inapplicable to telephone rates and that the rate assailed was not in any event a joint rate but a combination of intermediate rates for toll service; that toll service is more expensive than local service; and therefore that the 15-cent component applied from Flushing to Man-

hattan is not proved unreasonable by the 5-cent rate for local service from and to the same points. Defendants also object that the New England Telephone & Telegraph Company is not made a party defendant.

Local messages from Flushing to Manhattan travel first to the Flushing exchange, then to the Prospect exchange in Brooklyn, N. Y., then to a local exchange in Manhattan and from there to the person called. Service by three New York Telephone Company operators is required, except for some messages which travel over direct trunk lines from the Flushing exchange to exchanges in Manhattan and engage the services of only two operators. When the Flushing exchange receives a call for a long distance point the receiving operator relays it to an operator at the Prospect exchange, who relays it over a tandem circuit to an operator at the Beekman exchange, Manhattan, who relays it to an American Telephone & Telegraph Company recording operator at the long distance exchange at Franklin street, Manhattan. The recording operator obtains the details of the call from the person calling and turns them over to a long distance line operator at the same exchange, who establishes a connection with the Prospect exchange over a heavy gauge loaded circuit. An operator at the Prospect exchange then connects the line operator at Franklin street with a receiving operator at Flushing. The heavy gauge return circuit, as it is called, is then held open until the long distance line operator locates the person called, provided it does not take more than 10 minutes. If more than 10 minutes are required to locate the person called the heavy gauge return circuit is broken and a new one opened when the person called is finally located. Toll service accordingly must be more costly to perform than local service, and, as there is no return to the telephone company unless the person called responds, must also cost more to render. Defendant New York Telephone Company was required to do little more in getting the American Telephone & Telegraph Company's recording operator at the Franklin street exchange for complainant than it would have been required to do to get a private number in Manhattan, but the recording operator had still to get the line operator who had to establish a new heavy circuit connection with the Prospect exchange, and ultimately with the exchange at Flushing. Defendant's witness gave numerous figures showing the cost of toll service relatively to local service, but failed to produce his working papers or other data upon which complainant's counsel could cross-examine him intelligently.

The act to regulate commerce expressly authorizes reasonable classification of telephone messages and charges, and in our opinion

toll service differs substantially from local service and may reasonably be rated higher. The single fact adduced by complainant, therefore, that defendants charged more for toll calls from Flushing to Manhattan, for beyond, than for local calls from Flushing to Manhattan, is not enough to prove that the through rate charged for complainant's calls was unreasonable. It also follows that the aggregate of intermediate rates rule of the fourth section is not violated, even if it is applicable, which we do not determine. The intermediate rates between two points whose aggregate can not legally be exceeded by a joint rate between the same points must apply to the same kind of service as the joint rate. Furthermore, purely intrastate rates can not lawfully be included among the rates aggregated unless they are available for interstate application. The 5-cent rate cited by complainant from Flushing to Manhattan was and is exclusively an intrastate rate that is inapplicable and is never applied to interstate service.

Complainant contends that the \$1.50 toll rate from Manhattan to Canaan took full account of any higher cost of toll service from Flushing to Canaan. But this assumes, what is not proved, that the total cost of toll service to defendants is not taken account of uniformly in defendants' rate structure; that it is not spread over defendants' total wire mileage, but is limited to the rates from certain points only. Defendants state that their joint toll rates, where such are maintained, normally are constructed on the basis of 6.25 mills per air-line mile, plus a terminal charge of 5 cents per call, with a minimum rate of 10 cents, and no rate that is not a multiple of 5 cents. The use of a unit rate shows that defendants severally distribute the cost of toll service over their entire system, and that such service is paid for by the totality of defendants' rates and not by the rates from certain points only. It would be improper for defendants to construct rates, available in combination, upon complainant's theory. The combination of local rates to a particular basing point with toll rates from the basing point would discriminate in favor of persons making long distance calls from the points taking the combination rates against persons calling from the basing point, especially where the charges for the time consumed over the initial periods allowed are computed on different bases. Extra time generally is computed in five-minute periods for local calls and in periods of one minute for toll calls. The initial periods allowed also are different, being five minutes for two-number calls and three minutes for toll calls. The \$9.25 conceded by complainant to be due defendants evidently is computed on the basis of a rate of 5 cents for the first five minutes and 5 cents for every additional five minutes to Manhattan, and at a rate of \$1.50 for the first three minutes

and 50 cents for every additional minute from Manhattan to Canaan. The amount due on this basis was \$10.25.

Defendants' long distance rates, constructed as described, ascend as follows: 10 cents for distances up to and including 8 miles; 15 cents for distances over 8 miles and not over 16 miles; 20 cents for distances over 16 miles and not over 24 miles. The Franklin street exchange in Manhattan is between 8 miles and 16 miles from Flushing, so that the normal toll rate is 15 cents, including the normal 5-cent terminal charge. It is not shown of record but is stated in defendants' brief that the \$1.50 rate involved from Manhattan to Canaan was constructed on the same normal basis. If so, complainant paid two terminal charges of 5 cents. Defendants maintained no "particular person" service from Flushing to Manhattan but admit that 15 cents would have been the rate for such service if it had been maintained. Calls from Flushing to Canaan, forwarded through Manhattan, clearly do not require the same amount of terminal service as two separate calls from Flushing to Manhattan and from Manhattan to Canaan, respectively. We find, therefore, that the through rate charged complainant was unreasonably high to the extent of 5 cents for three-minute calls and defendants are hereby authorized to waive the excess of the charges due on the calls of October 9 and October 11, 1914, over the charges that would have accrued at the rate herein found reasonable.

The nonjoinder of the New England Telephone & Telegraph Company as a party defendant precludes an order for the future. Effective November 1, 1915, moreover, the toll rate from Flushing to Manhattan was reduced to 10 cents, so that the present rate from Flushing to Canaan is 5 cents lower than the rate herein condemned. Where both the local and toll service are rendered by defendants between particular points, defendants' toll rates generally exceed their local rates by 5 cents per call. The 10-cent rate to Manhattan was established to restore a 5-cent spread between defendants' local rate from Flushing to New York and their toll rate. The combination of this rate with the \$1.50 rate beyond to Canaan may also involve excessive charges for terminal service, but we can not find upon the evidence before us that it is an excessive through rate for the service for which it is imposed, especially as it appears that the 5-cent local rate from Flushing to Manhattan was established by the Public Service Commission of New York not particularly with regard to or upon the basis of cost of service but to meet the peculiar conditions existing at New York City, and with the express reservation that the reduced rates among which it was included would not necessarily constitute a basis of comparison for other rates within the city.

Defendant New York Telephone Company suspended complainant's outgoing service pursuant to its contract with complainant, which provided expressly that the company might terminate complainant's service, without notice, upon the nonpayment of any sum due, and might sever the connection and remove the instrument installed in complainant's house. There is no evidence that other subscribers had different contracts or that the provision cited was not enforced against all subscribers equally. Complainant's service was not curtailed at all until August 17, 1915, nearly a year after the charges in controversy accrued, and the suspension of outgoing service on that date did not apply to outgoing emergency calls. Complainant contends that defendants should have accepted his check for \$9.25 and restored his service and litigated the remainder of the claim. Damages for the discontinuance of the complainant's telephone service are claimed by way of reparation. The complainant has not proved, however, that he was damaged by the discontinuance of the service of which complaint is here made, and accordingly an award of reparation can not be made. It is therefore unnecessary to enter upon a consideration of the jurisdiction of the Commission to award such damages as reparation, or the matter of the reasonableness of the contract provision referred to above.

40 I. C. C.

No. 8024.
NORTH PACIFIC FRUIT DISTRIBUTORS
v.
NORTHERN PACIFIC RAILWAY COMPANY ET AL.

Submitted January 27, 1916. Decided June 22, 1916.

A car rental charge of \$5 per car per trip for the use of a refrigerator or insulated car, when furnished upon shipper's order, in the transportation of deciduous fruits from the northwest during the season when protection from frost may be necessary and when such protection is, by his choice, furnished by the shipper at his own risk, not found to have been unlawful or unjustly discriminatory. Complaint dismissed.

Frank S. Bayley for complainant and intervener.

H. A. Scandrett, Charles Donnelly, and John F. Finnerty for defendants.

R. H. Schutz for Spokane International Railway Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

The lawfulness of a rental charge of \$5 per car per trip for the use of refrigerator or other insulated cars, when ordered by shippers, in the transportation of fresh deciduous fruits from points in the states of Oregon, Washington, Idaho, and Montana to various points in the United States and Canada is here put in issue. The charge became effective December 19, 1914, but was canceled November 8, 1915, for reasons hereinafter stated.

Complainant is a corporation which undertakes to effect sales in various markets for shippers of fruit in carloads. The complaint is as to carload shipments of apples upon which a rental charge of \$5 per car was collected by defendants, and alleges that such charge was "illegal, unjust, unfair, and discriminatory against complainant and other shippers of deciduous fruits" from the states named. Reparation is asked for the full amount of such charges.

The Northwestern Fruit Exchange filed a petition of intervention, setting forth carload shipments of apples on which a similar car rental charge was collected and asking reparation.

In agent Countiss's tariff I. C. C. 1002, effective December 19, 1914, defendants named rates for heated car service on carload shipments of perishable freight. This tariff provided that in order to protect

shipments from loss on account of frost during the period from October 15 to the following April 15, inclusive, the shipper must either provide such protection under an item designated as option 1, or request the carrier to do so under an item designated option 2. Under option 1 the shipper might furnish a heated car service at his own risk, with no liability upon the carriers for loss or damage not the direct result of their negligence. On stoves or car fittings furnished by shippers under this option a dunnage allowance for their actual weight was provided, but not to exceed 1,000 pounds when loaded in insulated cars, and 2,500 pounds when loaded in other cars. If the stoves or fittings were returned to the owner as freight shipments over the route of original movement no transportation charges were assessed. Under option 2 the shipper might pay a named charge for such service when furnished by the carriers, and full liability for loss due to frost, not the direct result of negligence of the shipper, would be assumed by the carriers. Charges for shipments under option 2 ranged according to distance and other conditions from \$15 to \$35 per car on shipments destined to points west of the Mississippi River and to certain Minnesota points east of the river; and on shipments to points farther east, charges for similar service beyond the river, if any, were to be added.

Another rule in this tariff in connection with the rates for heated car service provided:

When a refrigerator or other insulated car is furnished upon shipper's orders, a charge of \$5 per car per trip will be made for the use of car.

This is the provision under which the car rental charge in issue was assessed. It was applicable only on shipments moving between October 15 and April 15, inclusive.

For a time the rental charge was collected on all shipments in refrigerator or insulated cars, under either option, but, effective March 4, 1915, the rental charge was limited to shipments under option 1. This change was made because of a related provision in the tariff that the heated car service rates published therein should cover the entire cost of such service; the carriers having concluded that the charges named in connection with option 2 included compensation for the use of the car. It was stated that all previously collected car rental charges under option 2 were or would be refunded as overcharges.

From tariffs on file with us it does not appear that prior to December 19, 1914, any rates or regulations were published by these defendants applicable to heated car service for shipments of apples from the Pacific northwest, nor was any provision made for the furnishing of such a service by the shipper, except that certain tariffs

provided that from October 1 to May 1 an allowance of 1,500 pounds would be made for the weight of stoves and linings used to protect carload shipments of apples.

The shipments complained of herein all moved under option 1, with the heated car service, when necessary, furnished by the shippers. As stated, the rental charge has been canceled and therefore the issues presented are now important only as related to the question of reparation.

The attack upon the lawfulness of the charge is based upon the theory that compensation for the use of refrigerator or insulated cars was included in the transportation rates. The record indicates that apples from this northwest territory have for many years moved in refrigerator or insulated cars, but there is no definite showing as to whether or not the fact that transportation in such cars is more expensive than in ordinary box cars was taken into consideration when the transportation rates were established. Complainant and intervener insist that all conditions of transportation must have been considered and the more expensive service provided for in the original rates, while defendants take the opposite view with respect to this service. No witness with personal knowledge on the subject was called on either side. The long continuance of the transportation rates with no accompanying car rental charge would seem by implication to support the view of complainant and intervener, but, on the other hand, defendants showed that the car-mile and ton-mile earnings under the regular transportation rates have been and are relatively low as compared with earnings upon transcontinental shipments of analogous commodities in box cars. Exhibits were presented in which earnings on shipments of apples and other articles requiring the use of refrigerator or insulated cars are compared with earnings on carload shipments of articles that move in box cars, from which it appears that the earnings per car-mile and per ton-mile on apples and potatoes from this territory are generally lower than those on the shipments moving in box cars from the same territory. Refrigerator cars cost more than box cars, and it is not questioned that transportation in the former is more expensive than in the latter. Aside from the fact that no extra charge for the use of refrigerator or insulated cars had been made prior to December 19, 1914, the record discloses no evidence to justify a finding that compensation for the more expensive service in such cars was considered in fixing the transportation rates, and we can not assume that such was the case.

On the question of discrimination it is contended that the car-rental charge was unjust and prejudicial to shippers of fruit for

two reasons, (1) because imposed during only a portion of the year and (2) because imposed on shipments under option 1 and not as to shipments under option 2. We find no justification for the contention either on the face of the tariff or in the evidence respecting the manner of its application. A heated car service was necessary only during the months named, and would not have been used by shippers during the other months, even if provided for. The right to ship under option 1 was open to all alike, without limitation or restriction. The same was true of the right to ship under option 2. See *Rental Charges for Insulated Cars*, 31 I. C. C., 255. The tariff does not indicate a purpose to discriminate against or in favor of any shippers, nor does the record show discrimination in fact.

Defendant Southern Pacific Company concurred in the tariff only with respect to shipments via Portland, Oreg., from and to points in Oregon south of Portland. On shipments which moved over the Southern Pacific via Roseville, Cal., or via the Oregon Short Line east of Huntington, Oreg., no car rental charge was made. A witness for defendant Oregon-Washington Railroad & Navigation Company testified that the cancellation of the charge was not occasioned by any belief on part of the carriers that it was unreasonable or unlawful in itself, but was due to competitive conditions brought about chiefly by the Southern Pacific in the movement of apples from Oregon to the east via Roseville and Ogden, Utah, as to which no car rental charge was made. Because of such competition the Oregon-Washington Railroad & Navigation Company determined to discontinue the charge, and the other lines serving the northwest joined in the cancellation. It does not appear that any shipments moved from the state of Oregon via Portland in connection with the Southern Pacific lines.

From the facts disclosed of record we do not find that the car rental charge was unlawfully assessed, or that such charge was unjustly discriminatory against the shippers represented by complainant or intervener. The collection of the charge during a portion of the year while not imposing it during the remainder of the year was not discriminatory in itself, and the record does not show that either complainant or intervener, or any other shipper or shippers of fruit, were injured by reason thereof.

A question is raised as to whether complainant and intervener were the owners of or sustained such relation to the shipments as to entitle them to recover reparation. In view of our conclusions on the merits of the case, it is unnecessary to consider this question. The complaint will be dismissed, and it will be so ordered.

INVESTIGATION AND SUSPENSION DOCKET No. 782.
EXPORT GRAIN PRODUCTS FROM MISSOURI RIVER
POINTS (No. 2).

Submitted May 20, 1916. Decided June 23, 1916.

During the season of navigation on the great lakes, respondents, in common with other carriers, maintain joint proportional rates from Missouri River cities to Norfolk and Newport News, Va., on grain products for export equal to the prevailing rate from the same points of origin via rail-lake-and-rail routes to Baltimore, Md. At the close of the season of navigation each year such rates are customarily withdrawn, leaving higher through rates in effect. The proposed withdrawal of these rates via respondents' lines having been suspended and investigation into the propriety and reasonableness thereof having been made, *Held:*

1. That the rates which would result from the proposed withdrawal form part of a general adjustment of rates on grain and grain products exported through Atlantic and Gulf ports, made in competition with rates to other ports.
2. That the establishment of the higher rates would not be in contravention of the provisions of the fourth section of the act to regulate commerce and that the proposed withdrawal of the joint rates has been justified under the circumstances of this case.

Frank W. Gwathmey for Southern Railway Company; Chesapeake & Ohio Railway Company; Norfolk & Western Railway Company; and Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

C. W. Galligan for Chicago & Alton Railroad Company.

Robert Dunlap and *T. J. Norton* for Atchison, Topeka & Santa Fe Railway Company and Chicago Great Western Railroad Company.

W. A. Poteet for western lines.

W. I. Sterling for Kansas City Millers' Club.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

This proceeding involves the proposed withdrawal of all-rail proportional rates on grain products from Missouri River cities to Norfolk and Newport News, Va., when for export. The latter ports will be hereinafter referred to as the Virginia ports. By schedules filed to become effective January 25, 1916, the Atchison, Topeka & Santa Fe, Chicago & Alton, and Chicago Great Western railroads

proposed to withdraw their then existing proportional rates on such traffic. Upon protest of the Kansas City Millers' Club the operation of the schedules was suspended until May 24, 1916, and by subsequent orders until November 24, 1916.

For some years past it has been the custom of the carriers operating eastward from the Missouri River to publish, contemporaneously with the opening of navigation on the great lakes, through proportional or reshipping rates applicable all rail to the transportation from Missouri River cities of grain products originating west of the Missouri River, or manufactured at those points from grain originating beyond, and destined to the Virginia ports for export. At the close of lake navigation each season the rates have customarily been withdrawn. Prior to or about the time of the close of lake navigation for the season of 1915 the following-named carriers published the customary notice of expiration or withdrawal of these all-rail proportional rates to the Virginia ports, the dates upon which notice of expiration or withdrawal was given and the effective date of the proposed withdrawal being as follows:

Railroad.	Date notice of withdrawal given.	Date of withdrawal proposed.
C. & N. W. Ry.....	May 20, 1915	Nov. 30, 1915
C., B. & Q. R. R.....	.....do.....	Do.
C., M. & St. P. Ry.....	Oct. 16, 1915	Do.
C., R. I. & P. Ry.....	May 27, 1915	Do.
M., K. & T. Ry.....	Oct. 28, 1915	Dec. 12, 1915
Mo. Pac. Ry.....	May 20, 1915	Nov. 30, 1915
Wabash R. R.....	May 23, 1915	Do.
I. C. R. R.....	Dec. 10, 1915	Jan. 25, 1916
A., T. & S. F. Ry.....	Dec. 9, 1915	Do.
C. & A. R. R.....	Dec. 8, 1915	Do.
C. G. W. R. R.....	Dec. 10, 1915	Do.

All except the last three carriers named withdrew, according to custom, the joint rates, leaving the combination of rates to apply in lieu thereof. The attention of the Commission was directed to the Atchison, Topeka & Santa Fe and Chicago & Alton schedules, specific protest being lodged against the latter. The schedules were suspended, whereupon the Chicago Great Western requested that its tariff be likewise suspended, which was done. No protest was made against the schedules of any of the other carriers named, nor was the Commission's attention specifically directed to them. The somewhat belated notice of withdrawal by the respondents herein is attributed to oversight.

The respondents contend that the rates involved are compelled by competition and that they are low. They show that under the general scheme of the adjustment of rates from Missouri River cities on grain and grain products for export through the Atlantic seaboard and Gulf ports, Baltimore, Md., is taken as the basing port.

Rates to Philadelphia, Pa., and New York, N. Y., are fixed differentials over Baltimore, while the rates to Gulf ports are certain differentials under the Baltimore rate. *Board of Trade of Chicago v. I. C. R. R. Co.*, 26 I. C. C., 545, 546.

West of Chicago and the Mississippi River certain grain products take the same rate as flour, while corn meal and other specifically named articles take a common rate. For convenience these will hereafter be referred to as the flour and corn-meal rates, respectively. The through all-rail rates from Missouri River cities to Baltimore are 24.8 cents per 100 pounds on flour, based on a rate of 12 cents from the Missouri River to Chicago, plus the all-rail rate of 12.8 cents from Chicago to Baltimore, and 23.8 cents on corn meal, based on 11 cents from the Missouri River to Chicago, the all-rail rate from Chicago to Baltimore being, as on wheat, 12.8 cents. The combinations of through proportional rates via St. Louis are equal in amount to the above-stated all-rail combinations through Chicago. During the season of navigation on the great lakes, however, the lake-and-rail rate from Chicago to Baltimore has hitherto been 10 cents per 100 pounds, making the through rail-lake-and-rail rates from the Missouri River cities, via Chicago, to Baltimore 22 cents on flour and 21 cents on corn meal. To equalize the latter rates the joint through proportional all-rail rates from the Missouri River cities to the Virginia ports on flour and corn meal for export, including those here under suspension, have been published by all the carriers for the purpose of putting the Virginia ports on the same basis as Baltimore during the season of lake navigation.

The protestant contends that the rates sought to be withdrawn are fair and remunerative and presumably must be so considered by respondents, since they voluntarily established them in the first instance. Its witness compares the rate of 22 cents from Kansas City to the Virginia ports, which yields ton-mile revenue of 3.36 mills for a haul of 1,307 miles, with the rate of 12.8 cents from Chicago to Baltimore yielding ton-mile revenue of 3.21 mills for a haul of 796 miles; and with the rate of 15.8 cents from St. Louis to Baltimore yielding ton-mile revenue of 3.39 mills for a haul of 932 miles. It points out that the rate from the Missouri River cities to the Virginia ports yields higher revenue per ton-mile than does the rate from Chicago to Baltimore.

The export rates from Chicago and St. Louis to Baltimore are competitive rates and have been in effect for several years unchanged save by the increases permitted in *The Five Per Cent Case*, 31 I. C. C., 351. The bare comparison of ton-mile earnings as made by protestant is inconclusive upon the question of reasonableness, particularly in view of the character of the rates with which comparison is made. Of like effect, and even less helpful, is the com-

parison made with rates from Minneapolis, Chicago, and St. Louis to New Orleans, La.

The question involved here is the reasonableness and propriety of the proposed withdrawal of joint through proportional rates published by respondents and of the through rates which, based on the combinations of intermediate rates through St. Louis or other Mississippi River crossings, would have resulted had the suspended schedules become effective. Perhaps the most important phase of the case is the matter of relationship, during the season of open navigation on the great lakes, between the all-rail rates and the rail-lake-and-rail rates applicable through Chicago to Baltimore. The protestant contends that the proportionals "are not predicated on competition of the great lakes" because "there are no lake-and-rail rates from Chicago or East St. Louis, Ill., to these Virginia ports." Also that "they have been established through the East St. Louis gateway by adding to the proportional rates of 9 cents per 100 pounds on flour, carloads, and 8 cents per 100 pounds on other grain products, an arbitrary charge of 13 cents per 100 pounds."

It is apparently protestant's contention that the joint through proportional rates are based upon the proportional or reshipping rates in effect from Kansas City to St. Louis plus an "arbitrary." It was shown in *Kansas City Missouri River Navigation Co. v. C. & O. Ry. Co.*, 34 I. C. C., 67, 70, that the very rates here in question are made to meet the competition of rail-lake-and-rail rates to Baltimore and are divided by allowing the carriers west of the Mississippi River their proportional rates of 9 and 8 cents on flour and corn meal respectively, and the remainder, 13 cents, to the carriers east of the river. There is no 13-cent "arbitrary" from St. Louis to the Virginia ports.

The rates on grain products from Missouri River cities to the Virginia ports are, as already stated, equalized during the season of open navigation with the rail-lake-and-rail rates contemporaneously in effect therefrom to Baltimore. They are likewise equalized with the all-rail rates via Chicago to Baltimore during the season of closed navigation on the lakes as is evident from the fact that upon the withdrawal of the joint proportional rates at the close of navigation each season, the through rates via St. Louis to the Virginia ports revert to the combination of intermediate rates, for example, 9 cents on flour and 8 cents on corn meal from Kansas City to St. Louis, plus a proportional rate of 15.8 cents on grain products applicable from St. Louis to the Virginia ports for export. The combinations of the latter rates are, as will be observed, exactly equal to the combinations of all-rail rates through Chicago to Baltimore, the factors of which have heretofore been stated.

The carriers which, as we have noted, withdrew the joint proportional export rates from the Missouri River to the Virginia ports at the close of lake navigation in 1915, including the Illinois Central Railroad, which did not withdraw its proportional rates until January 25, 1916, have, with the opening of lake navigation this season, reestablished the former rates of 22 cents on flour and 21 cents on corn meal. If the schedules here in question should not be withdrawn, it would result in the maintenance during the present season of the same rates that have been in effect during past seasons and which the other carriers have now restored for the present season. On the other hand, one of respondents' witnesses stated that in the event the Commission should vacate its order of suspension the carriers probably would ask the Commission for permission to put the proportional rates into effect on less than statutory notice.

The obvious effect of maintaining the proportional rates during the season of closed navigation has been to keep in effect to the Virginia ports rates which are 2.8 cents below those contemporaneously applicable to Baltimore, whereas the general adjustment is predicated upon their being equal. The rates have been, since the close of navigation, 2.8 cents above the rates from Kansas City to New Orleans, whereas the general adjustment, since the increases resulting from *The Five Per Cent Case, supra*, contemplates that they shall be 5.6 cents above the New Orleans rates. Respondents contend, and we think with some force, that such a situation threatens the integrity of the export rate structure.

It can not reasonably be expected that the general adjustment of rates on grain products to the Atlantic and Gulf ports for export can be maintained if one of the factors should be materially changed. The reduction of the rate heretofore maintained to the Virginia ports during the season of closed navigation on the great lakes would doubtless be followed by reductions to other ports. The ultimate result would be, probably, as aptly stated in respondents' brief, that the carriers would be driven around in a circle to the very relationship which the suspended schedules were intended to restore or maintain. There would be a general reduction in the export rates, but the same relative basis would doubtless be maintained. Such a result could be of no material benefit to the protestant or other shippers from Missouri River cities. *Baltimore Chamber of Commerce v. B. & O. R. R. Co.*, 22 I. C. C., 596, 603.

Some question has been raised with respect to possible application to this case of the provision of the fourth section, as amended, to the effect that whenever a carrier by railroad shall in competition with a water route or routes reduce the rates on the carriage of any species of freight to or from competitive points, it shall not be per-

mitted to increase such rates unless after hearing by the Interstate Commerce Commission it shall be found that such proposed increase rests upon changed conditions other than the elimination of water competition. The combination rates which would have become effective but for the suspension have, as already stated, been in effect for some time. The factor east of the river was permitted to be increased in *The Five Per Cent Case, supra*, and no question of the reasonableness of the respective factors is presented here. Moreover, there are changed conditions which satisfy the requirements of the fourth section, for the severance of the lake lines from the ownership and control of the rail carriers has left the question of lake-and-rail and rail-lake-and-rail rates for the present season in some uncertainty. The action of the other Missouri River carriers in restoring the same proportional rates that have been in effect for several seasons past implies a purpose to maintain, at least for the present, the basis of rates heretofore in effect. We believe that under all the circumstances of the case the respondents here should be left free to act in conjunction with other interested carriers in the future maintenance of export rates on grain products from the Missouri River to the Virginia ports, and that the proposed withdrawal of rates now held under suspension has been justified.

An order will be entered vacating the suspension as of August 15, 1916.

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THE MISSOURI RIVER-NEBRASKA CASES.¹

Submitted October 26, 1915. Decided July 3, 1916.

1. Class rates between Council Bluffs and Sioux City, Iowa, St. Joseph and Kansas City, Mo., and Atchison, Kans., and points in the state of Nebraska found to be unreasonable in so far as they exceed the scale of maximum class rates prescribed.
2. The present relation of class rates between Council Bluffs and Sioux City, Iowa, St. Joseph and Kansas City, Mo., and Atchison, Kans., and points in the state of Nebraska, and between Omaha and other Nebraska cities and the same points in the state of Nebraska results in undue preference to Omaha and other Nebraska cities and subjects Council Bluffs, Sioux City, St. Joseph, Kansas City, and Atchison to undue and unreasonable prejudice and disadvantage.
3. The present relation of classification ratings and exceptions thereto applicable to transportation between Council Bluffs and Sioux City, Iowa, St. Joseph and Kansas City, Mo., and Atchison, Kans., and points in the state of Nebraska, and between Omaha and the same points in the state of Nebraska results in undue preference to Omaha and other Nebraska cities and subjects Council Bluffs, Sioux City, St. Joseph, Kansas City, and Atchison to undue and unreasonable prejudice and disadvantage.
4. Defendants ordered to cease and desist from the undue preferences and the undue and unreasonable prejudices and disadvantages found to exist.

C. E. Childe for Traffic Bureau of the Sioux City Commercial Club.

H. G. Krake for Traffic Bureau of the Commerce Club of St. Joseph, Mo.

W. S. Washer, A. E. Helm, and Harry L. Sharp for the Traffic Bureau of the Atchison Commercial Club of Atchison, Kans.

Dwight N. Lewis, Clifford Thorne, and W. H. Killpack for Council Bluffs Commercial Club.

R. D. Sangster for Department of Traffic of the Commercial Club of Kansas City.

Clifford Thorne and Dwight N. Lewis for Iowa State Board of Railroad Commissioners and for Sioux City Commercial Club.

A. E. Helm for Public Utilities Commission of Kansas.

¹ The proceeding embraces complaints in—No. 7311, Traffic Bureau of the Sioux City Commercial Club *v.* Chicago & North Western Railway Company et al.; No. 7352, Traffic Bureau of the Commercial Club of St. Joseph, Mo. *v.* Chicago & North Western Railway Company et al.; No. 7447, Traffic Bureau of the Commercial Club of Atchison, Kans., *v.* Same; No. 7461, Council Bluffs Commercial Club *v.* Same; and No. 7501, Department of Traffic of the Commercial Club of Kansas City *v.* Chicago, Burlington & Quincy Railroad Company et al.

Henry T. Clarke, jr., Willis E. Reed, Charles S. Roe, and Edward P. Smith for Nebraska State Railway Commission.

E. J. McVann for Commercial Club of Omaha.

Walter S. Whitten and *L. A. Ricketts* for Lincoln Commercial Club of Lincoln, Nebr.

W. H. Young for Fremont Traffic Bureau.

F. W. Maxwell for Denver Transportation Bureau.

A. M. Conners for Commercial Club of Grand Island.

A. F. Versen for Business Men's League of St. Louis.

C. C. Wright for Chicago & North Western Railway Company.

J. B. Sheean and *C. C. Wright* for Chicago, St. Paul, Minneapolis & Omaha Railway Company.

R. B. Scott for Chicago, Burlington & Quincy Railroad Company.

H. A. Scandrett and *B. W. Scandrett* for Union Pacific Railroad Company.

W. F. Dickinson and *Wallace T. Hughes* for Chicago, Rock Island & Pacific Railway Company.

R. A. Brown and *R. L. Douglas* for St. Joseph & Grand Island Railway Company.

H. G. Herbel and *F. G. Wright* for Missouri Pacific Railway Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

This proceeding embraces five complaints brought by the commercial clubs of Sioux City and Council Bluffs, Iowa, St. Joseph and Kansas City, Mo., and Atchison, Kans., which are similar in character, were heard and submitted upon oral argument together, and will be dealt with in one report.

THE ISSUES.

The complainants attack as unreasonable, unjustly discriminatory, and unduly prejudicial the class rates applicable between the above-named cities and all points in the state of Nebraska. Allegations of unjust discrimination and undue prejudice are predicated upon comparisons of the rates in question with class rates which became effective for intrastate transportation between Omaha, Lincoln, and other Nebraska cities and points in that state on September 6, 1914, pursuant to an order of the Nebraska State Railway Commission, generally known and hereinafter referred to as general order No. 19. This order prescribed new schedules of class rates applicable to Nebraska intrastate traffic which are approximately 20 per cent lower than those formerly in effect. As a result substantial changes were brought about in a long standing relationship of rates from and to the principal distributing centers on the Missouri River and in

interior Nebraska which compete for the trade of the state of Nebraska. Other allegations of unjust discrimination have reference to classification differences. Nebraska classification No. 1, effective December 15, 1911, names certain ratings applicable to intrastate shipments which are lower than those fixed by western classification No. 53 governing interstate traffic. The intrastate rates are also governed by certain exceptions to the Nebraska classification, which provide more liberal rules and lower ratings on intrastate traffic than are accorded to interstate shipments.

The defendants embrace all of the railroads having lines in the state of Nebraska with the exception of certain lines which reach only one city in that state, the Atchison, Topeka & Sante Fe, which reaches Superior, and the Chicago Great Western, the Chicago, Milwaukee & St. Paul, and the Wabash, which reach Omaha. In their answers to the allegations of the complaints defendants deny that the interstate rates under attack are unreasonable. They aver that the Nebraska intrastate rates were not made effective voluntarily, but were published under protest and by order of the Nebraska commission; that the application of these intrastate rates is limited to intrastate traffic, and that if any discrimination exists it results from the action of the Nebraska commission in promulgating general order No. 19 and other orders requiring the adoption of the Nebraska classification. They further aver that the rates and classification ratings thus prescribed by the Nebraska commission are unreasonably low, and that defendants have appealed from general order No. 19 to the supreme court of Nebraska, which action is still pending.

The position taken by defendants upon the evidence of record is that the present rates from and to the complaining cities are not unreasonably high as shown (a) by the fact that the old adjustment was in the main satisfactory to all concerned, and (b) by comparisons with rates prescribed by this Commission, by state commissions, and voluntarily established by the carriers themselves; that the rates prescribed in general order No. 19 and the ratings prescribed in the Nebraska classification are so unreasonably low that they should not be made the measure of interstate rates and ratings. The defendants concede in evidence and argument that the present relationship of state and interstate rates and classification ratings results in unjust discrimination and undue prejudice against Council Bluffs and Sioux City. They ask the Commission to direct the removal of the unjust discrimination and undue prejudice which may be found to exist.

INTERVENTIONS.

The Nebraska State Railway Commission and commercial clubs or similar organizations representing the transportation interests
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of Omaha, Lincoln, and Fremont, Nebr., St. Louis, Mo., and Denver, Colo., intervened. The appearances of the chairman of the Iowa State Board of Railroad Commissioners and of its assistant commerce counsel were entered in behalf of that board and of complainants in the Council Bluffs and Sioux City cases. Likewise the appearance of the commerce counsel of the Public Utilities Commission of Kansas was entered in behalf of that commission and of the Atchison Commercial Club. The positions taken by some of the interveners are not the same with reference to all of the complaints. They will therefore be stated in connection with the discussion of the issues to which they relate.

**STATEMENT OF CERTAIN FACTS EITHER CONCEDED OR AS TO WHICH THERE
IS NO SUBSTANTIAL CONTROVERSY.**

These complaints were the subject of several hearings and the evidence of record in the form of testimony and exhibits is voluminous. A statement of certain facts, as to which no serious dispute has arisen, may properly precede a closer analysis of the issues.

All of the complainants, as has been stated, allege that the rates applicable between the complaining cities and all points in Nebraska are inherently unreasonable and therefore unlawful, in violation of section 1 of the act. Except in isolated instances these rates have not been increased since January 1, 1910, and the burden of proving the allegations of unreasonableness rests upon complainants. In behalf of Council Bluffs it was conceded that its primary interest is not in securing a reduction in the rates which have been attacked. Council Bluffs rests its case upon the allegations and evidence as to unjust discrimination and undue preference in favor of Omaha under the relation of rates now in effect between those cities and points in Nebraska. Unjust discrimination and undue preference by reason of rate relationships is also the gravamen of the Sioux City case. The evidence as to rates offered by Sioux City deals in a large measure, if not entirely, with the relation of rates from and to that city as compared with rates to and from cities located within the state of Nebraska, and it was expressly stated in evidence and on argument that Sioux City's primary interest in these proceedings is in the relative adjustment of rates. St. Joseph, Atchison, and Kansas City, which will be referred to when collectively considered as the lower Missouri River cities, did not undertake to sustain by evidence the allegations in their complaints that the rates under attack are unreasonable except as to a limited territory in the northeastern section of Nebraska. Defendants offered numerous ex-

hibits supported by testimony of witnesses for the purpose of affirmatively establishing the reasonableness of their interstate rates.

All parties to this record concede that undue prejudice exists against Council Bluffs in violation of section 3 of the act by reason of the present relation of class rates as between that city and Omaha applicable to Nebraska traffic. That certain unjust discriminations and undue prejudices against Sioux City and undue preferences in favor of Omaha are caused by the present relation of rates between those cities and points in Nebraska is conceded by the defendants and by the Omaha interests, and is not seriously disputed by any party to the record.

The railroad mileage of Nebraska, as shown by the annual report of the Nebraska commission for 1913, is 6,210.72 miles, divided as to carriers and percentages of the total as follows: Chicago, Burlington & Quincy, 2,872.71 miles, 46.2 per cent; Union Pacific, 1,184.38 miles, 19.1 per cent; Chicago & North Western, 1,102.05 miles, 17.7 per cent; Missouri Pacific, 380.03 miles, 6.2 per cent; Chicago, St. Paul, Minneapolis & Omaha, 308.39 miles, 4.9 per cent; Chicago, Rock Island & Pacific, 250.53 miles, 4 per cent; St. Joseph & Grand Island, 112.63 miles, 1.9 per cent. These carriers are hereinafter referred to, respectively, as the Burlington, Union Pacific, North Western, Missouri Pacific, Omaha, Rock Island, and Grand Island. In addition to the aggregate mileage stated above, the report of the Nebraska commission shows 474.20 miles of second track, of which 440.17 miles are operated by the Union Pacific. These mileages include branches and spurs but not yard tracks or sidings.

Traffic moving from the cities located on the east bank of the Missouri River must of course cross that river to reach Nebraska stations. In certain instances this traffic must move over two lines, while from a competing city the service can be rendered over the lines of a single carrier, and in this connection it may be pointed out that Omaha is served by all of the defendants except the Grand Island. Stated generally, however, the circumstances and conditions affecting transportation between all of the Missouri River cities, from Sioux City on the north to Kansas City on the south, and points in the state of Nebraska and between interior Nebraska cities and those points are substantially the same.

Between the complaining cities and Nebraska points and also between competing Nebraska cities and points in that state the rates are the same in both directions. The evidence relates principally to out-bound rates, but, as stated, rates in both directions are attacked, and it is not contended or shown that the circumstances and conditions surrounding the traffic justify the maintenance of a different basis

of class rates inbound from Nebraska points than is applied in the opposite direction. Rates from the Missouri River cities and from competing cities in Nebraska will be referred to hereinafter as representative of the rates between those cities and points in Nebraska. All rates herein are stated in cents per 100 pounds. Unless otherwise specified, the points of destination referred to in this report are located in the state of Nebraska.

HISTORY OF THE RATE RELATIONSHIPS PRIOR TO SEPTEMBER 6, 1914.

There is here disclosed a relationship of class rates from the principal Missouri River cities and certain interior Nebraska cities to destinations in that state which in substance, prior to September 6, 1914, had been in effect for 25 years or more. All of these Missouri River cities take the same class rates from Chicago and points east of the Indiana-Illinois state line, and the proportional class rates from all east bank Mississippi River crossings to the Missouri River cities, except Sioux City, are also the same. To Sioux City the proportional class rates are the same from the upper Mississippi River crossings. In fixing the outbound rates from the Missouri River cities to stations in Nebraska, distance has been largely disregarded. The explanation of this adjustment is found in the history of the construction of railroads to that territory, in competition between the carriers, and in the policy of commercial equalization which has been extensively followed in making rates.

The history of railroad construction in this territory shows that the lower Missouri River cities were given an early access into Nebraska. Among the earlier lines of railroad were those laid out in a northwesterly direction from that river and which gave the lower cities an outlet for shipments into the territory south of the Platte River. A more detailed statement of the adjustment of rates from these points and from Omaha, Council Bluffs, and Sioux City will be made in a subsequent part of this report. It is sufficient to state here that the southern and southeastern sections of the state for many years have been accorded a closely related adjustment of rates from the several Missouri River crossings in which distance has not been a controlling factor. As the lines of railroad were extended throughout the state the policy of rate equalization was continued with modifications for increased distances made, however, by what are somewhat loosely described as differentials in the rates from the more distant points. The railroad geography of Nebraska in a large measure has been for 25 years what it is to-day, and during that period the relative adjustment of outbound class rates from the Missouri River cities remained practically unchanged until the new

schedules of intrastate rates became effective under general order No. 19. The evidence indicates that, except as to Sioux City and in certain respects as to Omaha, the former relationship of rates from these competing points had given general satisfaction.

RATE EQUALIZATION UNDER GENERAL ORDER NO. 19.

The practice of equalizing rates from competing centers was not confined to interstate transportation to Nebraska territory, but was followed and extended in adjusting rates from certain Nebraska cities to points within that state. From such Nebraska cities rate equalization has been required by the Nebraska commission under general order No. 19. This equalization, which in large measure determined the rates from Nebraska centers of distribution, has an important bearing upon the issues in this case and requires explanation.

It was at first tentatively proposed by the Nebraska commission to establish a schedule of maximum distance class rates for application between 12 so-called distributing cities, namely, Omaha, Plattsmouth, Beatrice, Fremont, Hastings, St. Paul, South Omaha, Nebraska City, Lincoln, Fairbury, Grand Island, and Norfolk, and all other stations in the state, and to require that class rates between all other stations should not exceed 110 per cent of the rates thus proposed. The adoption of a distance tariff met with vigorous opposition from commercial interests representing the more important jobbing centers and also from the carriers. It was urged before the state commission that such a rate structure would cause a serious disturbance of established business conditions without conferring compensatory benefit and that the then existing relationship between the competing centers should be maintained. The proposed basis of rates was therefore abandoned. A distance scale was adopted upon which specific rates between some points are based, but in fixing rates between certain jobbing centers and other points the distance scale was disregarded and the principle of rate equalization was applied. The Nebraska intrastate class rates are specific and not maximum rates. The equalization required by state authority is as follows:

From Omaha the distance tariff which became effective under general order No. 19 applies with three exceptions. These exceptions are, first, where the long-and-short-haul rule, applied to the scale of interstate rates prescribed in *Iowa State Board of R. R. Commissioners v. A. E. R. R. Co.*, 28 I. C. C., 193, 563, hereinafter referred to as the Iowa-Nebraska scale, makes lower rates from the upper Missouri River crossings than the Nebraska scale, these rates are required to be observed as maxima. An illustration of this is found

in the rates from Omaha to Valentiné, on the line of the North Western. The distance from Omaha to that point is 302 miles and for this distance the fourth-class rate under the Nebraska distance tariff would be 45 cents. The distance from James, Iowa, the first station east of Sioux City, is 272 miles, making the fourth-class rate from Sioux City to Valentine 40 cents under the Iowa-Nebraska scale for two-line hauls. The fourth-class rate from Omaha to Valentine was made 40 cents by the Nebraska commission in order to effect an equalization of rates. The reductions below the level of the Nebraska scale made by this form of equalization are substantial. While the principle of the long-and-short-haul rule as applied to the Iowa-Nebraska scale was thus used to make rates lower than would have resulted from the application of the Nebraska scale from Omaha, the Nebraska commission did not accept the measure of interstate rates where, as in many instances, the rates so made would have been higher than under its scale.

Second, roads with longer lines are required to meet short-line rates at certain competitive points. Thus, from Omaha to O'Neill the short-line distance is 189 miles via the North Western. For this distance the Nebraska distance tariff rates for the first four classes are, respectively, 51, 43.4, 35.7, 30.6. These short-line rates are prescribed for the Burlington from Omaha to O'Neill, a distance of 257 miles by its line. For this distance the Nebraska distance tariff rates for the same classes would be, respectively, 65, 55.3, 45.5, 39. In prescribing short-line rates for the longer lines to junction points the Nebraska commission has in some instances followed the previous practices of the carriers, which were established, however, under a higher scale of rates, and in other instances has made the order as a new requirement. As an instance of the latter the North Western from Lincoln to Seward, for a distance of 101 miles, is required to meet the rates of the Burlington, which are based upon a distance of 25 miles. Under the former adjustment, however, but with a higher level of rates in effect, the North Western had met the competition of the Burlington at Exeter, a more distant point.

Third, in certain instances the carriers having the longer lines to competitive points and meeting rates of short lines at such points are required to grade back the rates to intermediate points. Orchard is intermediate to O'Neill on the line of the Burlington and is distant 234 miles from Omaha. The rates to Orchard prescribed by the Nebraska commission are, for the first four classes, 47, 40, 32.9, 28.2. These are lower than the Burlington's rates to O'Neill, which, as already stated, are 51, 43.4, 35.7, 30.6, and much lower than the

Nebraska distance tariff rates for 234 miles, viz, 61, 51.9, 42.7, 36.6. This adjustment, under which the carriers, while required to meet short-line rates, are not permitted to observe them as maxima at intermediate points, is criticized by the carriers, and is one of the reasons leading to their conclusion that the intrastate rates are too low.

From Lincoln and Fremont the rates to Nebraska points, approximately 50 miles or more distant, for all classes except class E, are made generally upon the basis of the Omaha rates to the same points less the inbound differentials to Lincoln and Fremont over the inbound rates from the east to Omaha. The inbound differentials to Lincoln and Fremont are the following:

Classes.....	1	2	3	4	5	A	B	C	D	E
Cents.....	5	5	4	4	3	3	3	3	3	3

The rates made by deducting these differentials are in some instances higher and in others lower than they would be under the Nebraska distance tariff. The rates from Beatrice on certain classes and to certain points south and west on the Burlington have been equalized in the same manner. The inbound differentials to Beatrice over the rates from the Mississippi River to Omaha are:

Classes.....	1	2	3	4	5	A	B	C	D	E
Cents.....	12	12	8	8	6	6	6	6	6	5

Hastings and Grand Island are equalized in rates for the first five classes to Burlington stations west of those points by making the rates the same from both cities to stations approximately 50 miles west of Grand Island on the line to Billings, Mont., and to stations approximately 50 miles west of Hastings on the lines to Denver and to Cheyenne, Wyo.

From Grand Island, Hastings, and Norfolk fourth-class rates are equalized to points west of those stations. These fourth-class equalized rates from Grand Island, for example, were made by deducting from the fourth-class Omaha rate to a given point the inbound fifth-class rate from Omaha to Grand Island, subject to the fifth class as a minimum. The basic reason for this form of equalization is the fact that the greater part of the less-than-carload outbound shipments made under fourth-class rates have been received by the jobbers in carloads at fifth-class rates, and the purpose is to equalize the transportation costs of Grand Island jobbers on fifth class in and fourth class out with the costs of distribution from Omaha under fourth class. The fifth-class rates from Norfolk have not in all cases been observed as minima, and in consequence some of the fourth-class rates from Norfolk are lower than the fifth-class rates. When this occurs

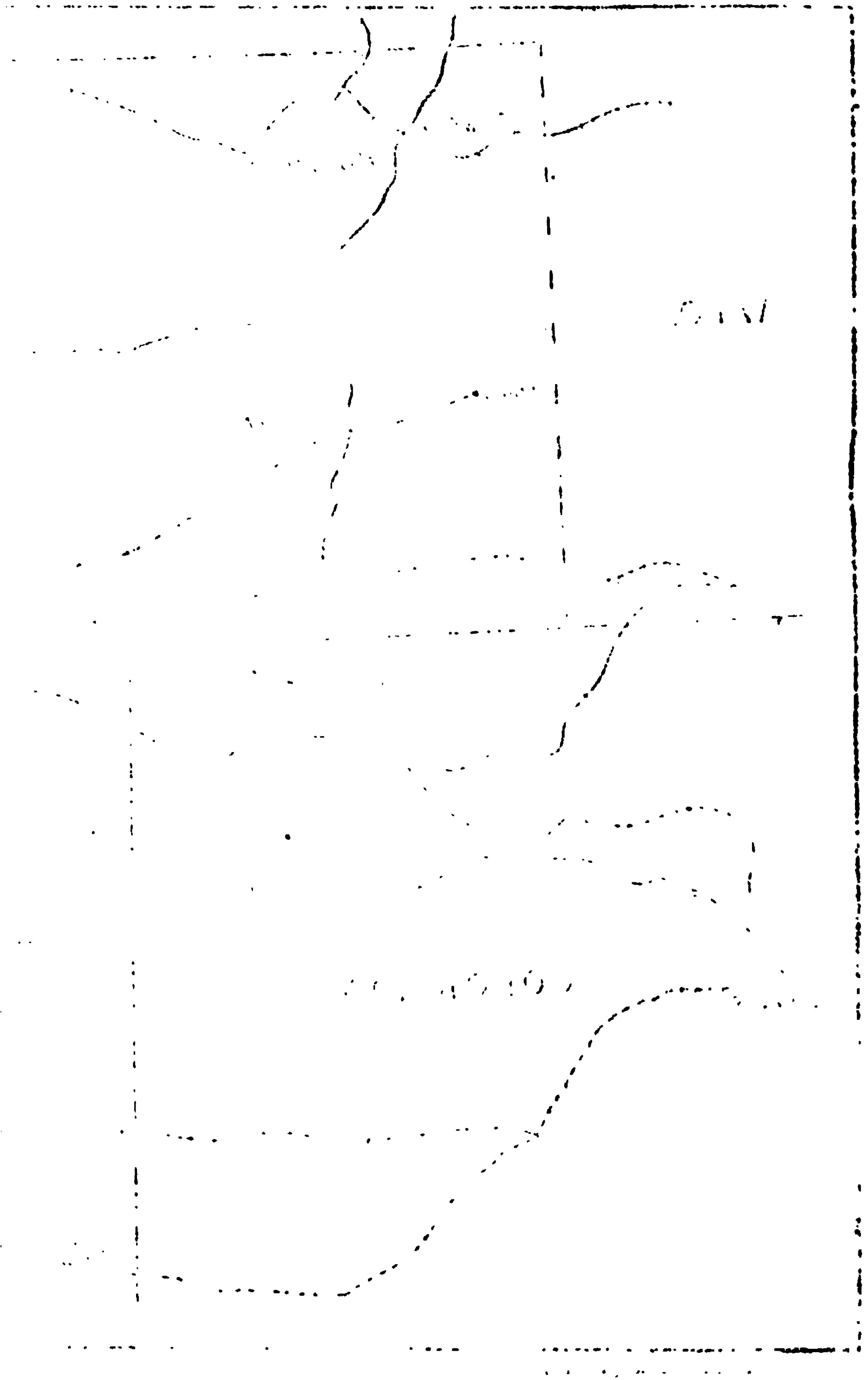
it is stated by the Nebraska commission to have been caused by clerical errors.

Rates on the first four classes from St. Paul and Columbus to certain points, stated generally, are on the same relative basis as the jobbing rates from Omaha. From Fairbury, except to near stations, the rates are the same as from Beatrice.

We come now to an analysis of the evidence offered in support of the several complaints. Although the issues in these cases have a common origin in the changed relationships of rates brought about by the application of reduced intrastate rates under general order 19 and complainants have a common purpose to secure a non-discriminatory basis of rates applicable to the same territory, the adjustments, railroad connections, and distances here involved differ in a greater or lesser degree with respect to each of the complaining cities. A clear understanding of these issues therefore requires a separate statement of the position of each complainant. The accompanying map shows the railroad connections of the complaining cities on traffic into the state of Nebraska. Rates are stated chiefly for the first five classes, under which substantially all shipments of merchandise are transported.

COUNCIL BLUFFS.

Council Bluffs is separated from Omaha in part by the Missouri River and in part by the Iowa-Nebraska state line. These cities have long been considered as common rate points. Their inbound rates, except from certain local territory, are the same from whatever point of origin. From Omaha to Iowa points the Iowa intrastate class rates apply and are made by adding 5 miles to the distance from Council Bluffs. For many years prior to September 6, 1914, class rates from these cities were the same to substantially all of the state of Nebraska. The exceptions were a few stations within a short distance from Omaha. The Nebraska intrastate class rates which became effective from Omaha on September 6, 1914, were not made applicable from Council Bluffs. The statement of the present rates from these cities to a few points of destination in Nebraska will suffice to illustrate the adjustment against which Council Bluffs complains and will serve to indicate in part the extent of the reductions in rates from Omaha under general order No. 19. The stations named in the table below are located on the Union Pacific. Freight hauled by that line, and by the North Western and Rock Island from Council Bluffs to Nebraska points, crosses the Missouri River and moves through Omaha.



	Miles.	1	2	3	4	5
To Valley from—						
Council Bluffs.....	28	22.0	19.0	17.0	13.0	10.0
Omaha.....	25	18.0	15.3	12.6	10.8	8.1
Difference.....		4.0	3.7	4.4	2.2	1.9
To North Bend from—						
Council Bluffs.....	55	32.0	27.0	22.0	17.0	14.0
Omaha.....	52	24.0	20.4	16.8	14.4	10.8
Difference.....		8.0	6.6	5.2	2.6	3.2
To Richland from—						
Council Bluffs.....	77	35.0	29.0	26.0	20.0	16.0
Omaha.....	74	28.0	23.8	19.6	16.8	12.6
Difference.....		7.0	5.2	6.4	3.2	3.4
To Silver Creek from—						
Council Bluffs.....	103	40.0	38.0	32.0	24.0	19.0
Omaha.....	100	33.0	28.1	23.1	19.8	14.9
Difference.....		7.0	9.9	8.9	4.2	4.1
To Paddock from—						
Council Bluffs.....	129	49.0	44.0	36.0	28.0	22.5
Omaha.....	126	39.0	33.2	27.3	23.4	17.6
Difference.....		10.0	10.8	8.7	4.6	4.9
To Alda from—						
Council Bluffs.....	155	51.0	46.0	39.0	30.0	24.5
Omaha.....	152	44.0	37.4	30.8	26.4	19.8
Difference.....		7.0	8.6	8.2	3.6	4.7
To Optic from—						
Council Bluffs.....	180	55.0	51.0	43.0	33.0	26.5
Omaha.....	177	49.0	41.7	34.3	29.4	22.1
Difference.....		6.0	9.3	8.7	3.6	4.4
To Elm Creek from—						
Council Bluffs.....	205	64.0	59.0	46.0	36.0	28.5
Omaha.....	202	55.0	46.8	38.5	33.0	24.8
Difference.....		9.0	12.2	7.5	3.0	3.7
To Vroman from—						
Council Bluffs.....	255	75.0	64.0	50.0	39.0	30.5
Omaha.....	252	65.0	55.3	45.5	39.0	29.3
Difference.....		10.0	8.7	4.5	0.0	1.2

A comparison of rates from these cities to stations on other lines shows substantially similar adjustments.

In the following table the comparisons which defendants make of rates for the first five classes from Council Bluffs to points on the line of the Burlington with the Iowa-Nebraska scale are stated in part. Freight hauled from Council Bluffs to Nebraska stations by the Burlington does not cross the bridge to Omaha, but moves south to Pacific Junction, Iowa, thence west across the Missouri River to Plattsmouth. The distance to Nebraska points via this route is about 22 miles greater than that from Omaha. Present rates from Council Bluffs are shown and comparison is made with the Iowa-Nebraska scale rates for distances from that point via the Burlington route as above described. Comparison is also made of rates for the 40 I. C. C.

distances from Omaha to the same destinations which would result from the application of the Iowa-Nebraska scale and the Nebraska distance tariff. As to each point of destination named in the table the distance shown in the first two lines is that via the Burlington from Council Bluffs, while the distance in the third and fourth lines is that from Omaha:

	Miles.	1	2	3	4	5
To Crete from Council Bluffs.....	97	35.0	30.0	25.0	20.0	17.0
Iowa-Nebraska scale.....	97	42.0	35.0	28.0	21.0	17.0
Do.....	75	37.0	31.0	25.0	19.0	15.0
Nebraska scale.....	75	28.0	23.8	19.6	16.8	12.6
To Hastings from Council Bluffs.....	174	51.0	45.5	38.0	30.0	24.5
Iowa-Nebraska scale.....	174	58.0	49.0	38.0	29.0	23.0
Do.....	152	54.0	45.0	36.0	27.0	22.0
Nebraska scale.....	152	44.0	37.4	30.8	26.4	19.8
To Funk from Council Bluffs.....	222	63.0	50.0	46.0	36.0	28.5
Iowa-Nebraska scale.....	222	68.0	57.0	45.0	34.0	27.0
Do.....	200	62.0	52.0	41.0	31.0	25.0
Nebraska scale.....	200	53.0	45.1	37.1	31.8	23.9
To Trenton from Council Bluffs.....	326	79.0	71.0	56.0	43.0	34.5
Iowa-Nebraska scale.....	326	83.0	70.0	55.0	42.0	33.0
Do.....	305	80.0	67.0	53.0	40.0	32.0
Nebraska scale.....	305	75.0	63.8	52.5	45.0	32.8

The present rates from Council Bluffs to points in Nebraska are the subject of numerous other rate comparisons offered by defendants, which it is unnecessary to set forth. Stated briefly they show that the rates under attack are in many instances lower than would result from the application of either the Iowa-Nebraska scale or the scale of class rates prescribed by the Commission in *Minneapolis Civic & Commerce Asso. v. C., M. & St. P. Ry. Co.*, 30 I. C. C., 663, for application from Minneapolis and St. Paul to points on the Chicago, Milwaukee & St. Paul Railway in South Dakota and North Dakota, hereinafter referred to as the Twin Cities-Dakota scale.

The differences in rates from Council Bluffs and from Omaha to Nebraska points are accentuated by differences in classification ratings and exceptions, to which reference will be made later in this report. That the adjustment thus disclosed unjustly discriminates against Council Bluffs and is unduly preferential to Omaha is, as we have said, conceded by all parties of record. As a consequence the jobbers, manufacturers, and other shippers at Council Bluffs have been placed at a serious disadvantage in competing with Omaha for Nebraska trade. Their inbound freight costs are in large measure the same. The differences in rates outbound and in classification ratings have resulted in the drayage of certain classes of freight, for example, oil and hardware, to Omaha for shipment from that point, and in the equalization of freight charges to customers on goods shipped directly

from Council Bluffs. The cost of draying oil to Omaha was stated to be 8 cents and of hardware 7 cents, per 100 pounds. Allowances for freight equalization are absorbed out of profits.

SIoux CITY.

Sioux City is located on the Missouri River in the state of Iowa at the northeastern border of Nebraska, approximately 100 miles north of Omaha. It has access to Nebraska points by direct lines of the Burlington and Omaha railroads, and less directly by the North Western, which enters Nebraska 70 miles south of Sioux City. The short-line route from Sioux City to Union Pacific stations in Nebraska is in most instances via the Omaha to Norfolk. Points on the Missouri Pacific and Rock Island are reached through Omaha or Lincoln, and points on the Grand Island are reached via Grand Island, Hastings, or Davenport.

More than 25 per cent of the goods jobbed or manufactured at Sioux City are shipped to Nebraska points. The aggregate tonnage of this business is not stated of record, but 17 of the business firms of the city reported 7,844 customers and annual sales amounting to \$4,179,143, consisting of 69,542,938 pounds of freight, moving under class rates from Sioux City to Nebraska points. Testimony was offered in behalf of firms dealing in many products, among which are hardware, wholesale groceries, lumber and its products, building materials, crackers, cakes and candy, flour and mill products, butter and eggs, seeds, fruits and vegetables, and brick. The total tonnage moved by the Burlington from Sioux City to Nebraska points during the year ended June 30, 1914, was 13,756,894 pounds, of which all but 517,857 pounds was shipped to stations on the lines of that carrier extending to O'Neill and Ashland. Sioux City ranked ninth in tonnage to Burlington stations in Nebraska for that year, being out-ranked by Omaha, Lincoln, Chicago, Kansas City, St. Louis, St. Joseph, Grand Island, and Hastings, in the order named.

The principal cities in Nebraska which compete with Sioux City and the other complaining cities for Nebraska trade are Omaha, Lincoln, Fremont, Beatrice, Fairbury, Plattsmouth, Hastings, St. Paul, Nebraska City, Grand Island, Columbus, Kearney, and Norfolk. The greater part of Sioux City's business in Nebraska is with the northeastern part of the state, approximately 90 per cent being done at stations on the North Western and Omaha lines northwest of Fremont and Blair and west to the Nebraska state line, and on the Burlington from Sioux City to O'Neill and Fremont. In the belief that Sioux City's business to this territory was restricted by a prejudicial

adjustment of rates, especially as compared with those in effect from Omaha and Lincoln, complaints were frequently made to the carriers by the business interests of Sioux City against the adjustment in effect prior to the promulgation of general order No. 19.

Exhibits showing the relation of rates to Nebraska which existed prior to June 1, 1914, the effective date of the class rates prescribed by the Commission in *Iowa State Board of R. R. Commissioners v. A. E. R. R. Co., supra*, are presented. We will not undertake a detailed statement of Sioux City's objections to the former adjustment, as it is the present relation which is primarily in issue. They may, however, be briefly summarized. Rates from Sioux City to stations on the North Western north and west of Norfolk were the same as those from Omaha, although the latter's distance is greater by 44 miles. Lincoln's distance to these points is 60 miles greater than that of Sioux City, and the rates were lower from Lincoln than from Sioux City by the amount of the Lincoln inbound differentials over the rates to Omaha from the east. These distances from Sioux City are computed by way of the Omaha to Norfolk and the North Western beyond, treating those defendants as one line, which Sioux City contends is proper in view of the fact that the Omaha is under the management and control of the North Western, although they are separately operated. To stations on the Omaha and Burlington in the northeastern part of the state, where Sioux City's distances are less than those of Omaha and Lincoln, the rates were higher from Sioux City as compared with Omaha and Lincoln than they would have been upon a distance basis. On the Union Pacific to points north and northwest of Columbus the rates from Sioux City were higher than from Omaha or Lincoln, while west of Columbus, Sioux City reached Union Pacific stations under rates substantially higher than Omaha except to the more distant points. The short-line distance of Sioux City to Union Pacific points west of Columbus is 44 miles greater than that of Omaha.

The reduction in rates from Omaha, pursuant to general order No. 19, with no corresponding reduction from Sioux City, has increased the spread as between these competing cities. At the present time, with the exception of a small section in the northeastern part of the state, Sioux City's class rates are higher than those applicable from Omaha regardless of distance.

The following tables show present rates on the first five classes and the distances, from Omaha and Sioux City, to representative Nebraska stations on the lines of several of the defendants. The rate differences in favor of or against Sioux City are shown, as are also the differences which would result from the application of the Nebraska

intrastate scale or the Iowa-Nebraska scale from these points. In this connection it should be stated that the defendants rely in part upon comparisons with the latter scale to show the reasonableness of the present interstate rates which are under attack. Emerson, the illustrative point in the following table, is located on the Omaha line in northeastern Nebraska:

To Emerson from—	Miles.	1	2	3	4	5
Present rates:						
Omaha.....	94	32.0	27.2	22.4	19.2	14.4
Sioux City.....	20	24.0	21.0	19.0	15.0	12.0
Difference.....		8.0	6.2	3.4	4.2	2.4
Nebraska intrastate scale:						
Omaha.....	94	32.0	27.2	22.4	19.2	14.4
Sioux City.....	20	19.0	16.2	13.3	11.4	8.6
Difference.....		13.0	11.0	9.1	7.8	5.8
Iowa-Nebraska scale:						
Omaha.....	94	41.0	34.0	27.0	21.0	16.0
Sioux City.....	20	26.0	22.0	17.0	13.0	10.0
Difference.....		15.0	12.0	10.0	8.0	6.0

The rates from Omaha to Emerson, shown in the foregoing table, as well as other rates between points in Nebraska stated elsewhere in this report, are those made effective under the requirements of general order No. 19. They have not been made applicable to interstate transportation. From Omaha and other Nebraska cities to destinations in that state defendants maintain rates applicable as factors of through interstate rates which are higher than the local intrastate rates.

As the Omaha serves both Sioux City and Omaha, a one-line haul is involved from each point of origin to Emerson. Further comparisons show that as between Sioux City and Omaha rates to all stations on the Omaha line would be more favorable to Sioux City than at present if either the Nebraska intrastate scale or the Iowa-Nebraska scale were applied from both points.

In behalf of the Omaha line there were shown the reductions in rates from Omaha to stations in Nebraska which were required by general order No. 19 and the readjustments which these reductions brought about as between Omaha and Sioux City. The present rates from Sioux City do not exceed the rates fixed by the Iowa-Nebraska scale from James, which is approximately 8 miles east of Sioux City.

To North Western stations west and north of Norfolk present rates are higher from Sioux City than from Omaha. Neligh is taken as a representative station.

To Neligh from—	Miles.	1	2	3	4	5
Present rates:						
Omaha.....	149	43.0	36.6	30.1	25.8	19.4
Sioux City.....	112	51.0	43.0	33.0	26.0	20.5
Difference.....		¹ 8.0	¹ 6.4	¹ 2.9	¹ 2	¹ 1.1
Nebraska intrastate scale:						
Omaha.....	149	43.0	36.6	30.1	25.8	19.4
Sioux City.....	112	36.0	30.6	25.2	21.6	16.2
Difference.....		² 7.0	² 6.0	² 4.9	² 4.2	² 3.2
Iowa-Nebraska scale:						
Omaha.....	149	52.0	43.0	34.0	26.0	21.0
Sioux City.....	112	46.0	39.0	30.0	23.0	18.0
Difference.....		² 6.0	² 4.0	² 4.0	² 3.0	² 3.0

¹ Sioux City higher than Omaha.² Omaha higher than Sioux City.

The distances above stated from Sioux City are those of the Omaha to Norfolk and the North Western beyond. The rates from Omaha to Neligh under general order No. 19 are based upon a distance of 149 miles. In the official table of distances filed with this Commission by the North Western the distance is indicated as 152.5 miles. The rates under the Iowa-Nebraska scale are those made by that scale for transportation by a single line. The Omaha and the North Western oppose Sioux City's contention that they should be treated as one line. Under the Iowa-Nebraska scale the rates for hauls over two or more lines are made by adding the following arbitraries to the one-line scale: First class, 5; second, 4; third, 3; fourth, 3; fifth and A, 2½; B, 2; C and D, 1½; E, 1.

It is shown that the application of either that scale or the Nebraska intrastate scale to North Western stations west and north of Norfolk, treating the Omaha and the North Western as one line, would result in lower rates from Sioux City than from Omaha. The same application to stations south of Norfolk would reduce Sioux City's present differences above the rates from Omaha. On the Hastings and Superior lines of the North Western, however, Omaha's present rate differences under Sioux City would in some instances be increased and in others reduced by the application of a distance scale. At Superior, where Sioux City's distance exceeds that of Omaha by 74 miles, a long standing equalization, undisturbed until the readjustment effected by general order No. 19, had placed Omaha and Sioux City on a rate parity except on traffic moving under class E rates.

Defendants have compared the present rates from Sioux City to Nebraska stations on the line of the North Western with the Iowa-Nebraska scale. These rates do not exceed rates made by that scale for two-line hauls applied to the distances from James. This, generally stated, is the basis on which they are made, although the full differentials for two-line hauls are not in all instances maintained.

To stations on the O'Neill line of the Burlington the present adjustment as between Sioux City and Omaha may be shown by rates to Orchard:

To Orchard from—	Miles.	1	2	3	4	5
Present rates:						
Omaha.....	234	47.0	40.0	32.9	28.2	21.2
Sioux City.....	108	51.0	43.0	33.0	26.0	20.5
Difference.....		¹ 4.0	¹ 3.0	1.1	² 2.2	² .7
Nebraska intrastate scale:						
Omaha.....	234	61.0	51.9	42.7	36.6	27.5
Sioux City.....	108	35.0	29.8	24.5	21.0	15.8
Difference.....		² 26.0	² 22.1	² 18.2	² 15.6	² 11.7
Iowa-Nebraska scale:						
Omaha.....	234	68.0	57.0	45.0	34.0	27.0
Sioux City.....	108	44.0	37.0	29.0	22.0	18.0
Difference.....		² 24.0	² 20.0	² 16.0	² 12.0	² 9.0

¹ Sioux City higher than Omaha.

² Omaha higher than Sioux City.

The application of either the Nebraska intrastate scale or the Iowa-Nebraska scale would result in similar readjustments in favor of Sioux City to stations north of Ashland on the Sioux City-Ashland line of the Burlington, and to Burlington stations west of Ashland would reduce the present differences against Sioux City, although not to the extent of restoring the adjustment as it existed prior to June 1, 1914. To Holdrege Omaha's present differences under Sioux City for the first five classes are 19, 20.2, 15.5, 9, 8.7. Under the Nebraska intrastate scale the differences in favor of Omaha for these classes would be 16, 13.6, 11.2, 9.6, 7.2. Under the Iowa-Nebraska scale they would be 12, 10, 8, 6, 5.

Defendants have compared the present rates from Sioux City to representative stations on the Burlington in Nebraska with the Iowa-Nebraska scale, with rates applicable from Kansas City, Mo., to points in Kansas and Colorado located on the line of the Union Pacific, and with rates prescribed by general order No. 19 for the same distances. These comparisons as to the first five classes are in part as follows:

From Sioux City to—	1	2	3	4	5
Ashland (Sioux City-Ashland line), 100 miles:					
Present rates.....	40.0	35.6	25.0	22.5	17.5
Iowa-Nebraska scale.....	44.0	37.0	29.0	22.0	18.0
Kansas City west.....	37.0	34.0	28.0	23.0	19.0
Nebraska intrastate scale.....	35.0	29.8	24.5	21.0	15.8
O'Neill (O'Neill branch), 130 miles:					
Present rates ¹	55.0	46.0	36.0	28.0	22.5
Iowa-Nebraska scale.....	48.0	40.0	32.0	24.0	19.0
Kansas City west.....	45.0	40.0	32.5	25.0	21.0
Nebraska intrastate scale.....	39.0	33.2	27.3	23.4	17.6

¹ These are the Iowa-Nebraska two-line rates for 138 miles, the distance from James to O'Neill.

From Sioux City to—	1	2	3	4	5
Berks (main line, Ashland to Denver), 150 miles:					
Present rates.....	44.0	39.0	29.0	25.0	20.0
Iowa-Nebraska scale	52.0	43.0	34.0	26.0	21.0
Kansas City west.....	51.0	45.5	38.0	30.0	26.0
Nebraska intrastate scale	43.0	36.6	30.1	25.8	19.4
Waco (main line, Lincoln to Crawford), 178 miles:					
Present rates.....	50.0	44.5	37.0	30.0	26.0
Iowa-Nebraska scale	58.0	49.0	38.0	29.0	23.0
Kansas City west.....	53.0	48.0	40.0	32.0	27.0
Nebraska intrastate scale	49.0	41.7	34.3	29.4	22.1
Superior (south of main line), 252 miles:					
Present rates.....	51.0	45.5	38.0	30.0	26.0
Iowa-Nebraska scale	71.0	60.0	47.0	36.0	28.0
Kansas City west.....	70.0	60.0	52.0	44.0	40.0
Nebraska intrastate scale	65.0	55.3	45.5	39.0	29.3
Culbertson (main line, Ashland to Denver), 373 miles:					
Present rates.....	87.0	79.0	62.0	48.0	38.5
Iowa-Nebraska scale	89.0	75.0	59.0	45.0	36.0
Kansas City west.....	85.0	76.0	68.0	60.0	47.0
Nebraska intrastate scale	89.0	75.7	62.3	53.4	40.1

To stations on the Union Pacific north and west of Columbus the present differences against Sioux City would be materially reduced by the application of either of the two scales with which comparison has been made. Columbus may be taken as illustrative of this situation:

To Columbus from—	Miles.	1	2	3	4	5
Present rates:						
Omaha.....	82	30.0	25.5	21.0	18.0	12.5
Sioux City.....	126	45.0	38.0	32.0	26.0	21.0
Difference.....		¹ 15.0	¹ 12.5	¹ 11.0	¹ 8.0	¹ 7.5
Nebraska intrastate scale:						
Omaha.....	82	30.0	25.5	21.0	18.0	12.5
Sioux City.....	126	39.0	33.2	27.3	23.4	17.6
Difference.....		¹ 9.0	¹ 7.7	¹ 6.3	¹ 5.4	¹ 4.1
Iowa-Nebraska scale:						
Omaha.....	82	39.0	33.0	26.0	20.0	16.0
Sioux City.....	126	48.0	40.0	32.0	24.0	19.0
Difference.....		¹ 9.0	¹ 7.0	¹ 6.0	¹ 4.0	¹ 3.0

¹ Sioux City higher than Omaha.

Further readjustments in favor of Sioux City would be made by the application of either the Nebraska intrastate scale or the Iowa-Nebraska scale to other representative Union Pacific stations. It should be noted, however, that in these comparisons the complainant has used the single-line basis in making rates from Sioux City to Union Pacific points under the two scales for the reason that Norfolk is a joint station of the Omaha and Union Pacific, and Sioux City asserts that the expense of transferring freight at this point is no greater than it is on a single-line haul, a conclusion which was made doubtful, however, by the evidence of the Union Pacific.

40 I. C. C.

Further comparisons of a similar character have been made by this complainant as between the present rates from Sioux City and Omaha to stations on the Grand Island and Missouri Pacific. It is shown that the application of the Iowa-Nebraska scale for two-line hauls would reduce the present rate differences in favor of Omaha to points on these lines.

Defendants have offered comparisons to show the reasonableness of the present rates from Sioux City to Rock Island stations in Nebraska. This movement involves a two-line haul. It is shown that the present rates are lower by large amounts than would be made by the application of the Iowa-Nebraska scale for two-line hauls, and are substantially lower than that scale provides for one-line hauls. They are also lower than the rates in effect under the Twin Cities-Dakota scale.

Complaint is also made by Sioux City with reference to the adjustment of rates from Lincoln. The application of either the Nebraska intrastate scale or the Iowa-Nebraska scale from these stations would result in a very material realignment of rates in favor of Sioux City. Clearwater, on the line of the North Western, is used as a representative station:

To Clearwater from—	Miles.	1	2	3	4	5
Present rates:						
Lincoln	177	40.0	33.3	27.5	23.0	17.3
Sioux City	121	53.0	44.0	35.0	27.0	21.5
Difference		¹ 13.0	¹ 10.7	¹ 7.5	¹ 4.0	¹ 4.2
Nebraska intrastate scale:						
Lincoln	177	49.0	41.7	34.3	29.4	22.1
Sioux City	121	38.0	32.3	26.6	22.8	17.1
Difference		² 11.0	² 9.4	² 7.7	² 6.6	² 5.0
Iowa-Nebraska scale:						
Lincoln	177	58.0	49.0	38.0	29.0	23.0
Sioux City	121	48.0	40.0	32.0	24.0	19.0
Difference		² 10.0	² 9.0	² 6.0	² 5.0	² 4.0

¹ Sioux City higher than Lincoln. ² Lincoln higher than Sioux City.

The Iowa-Nebraska single-line scale is used in this comparison. It is shown that to stations north and west of Norfolk the present rate differences in favor of Lincoln would be changed to substantial differences in favor of Sioux City by the application of either distance scale from these points. Numerous exhibits are of record with reference to Sioux City's complaint against the Lincoln adjustment. To Burlington points, for example, it is shown that the application of either scale from these distributing centers would in certain instances increase and in others decrease the present differences in favor of Lincoln.

THE SIOUX CITY-LINCOLN CONTROVERSY.

We turn for the moment in the statement of Sioux City's case to refer to what may be called the Sioux City-Lincoln controversy. Stated broadly all five of the complaining cities seek a reestablishment of the relationships which existed prior to the application of intrastate rates under general order No. 19. To this Sioux City's allegations of unjust discrimination form a notable exception. Sioux City not only predicates its case upon the changes in relationship which arose out of the application of reduced rates from Lincoln under general order No. 19, but earnestly attacks the adjustment by which outbound rates from that point are equalized with the Missouri River cities on the basis of the so-called Lincoln differentials. These differentials, which were stated in describing rate equalization under general order No. 19, became effective in 1888. See *Lincoln Board of Trade v. B. & M. R. R. Co.*, 2 I. C. C., 147. In that year by voluntary action of the carriers the outbound rates from Lincoln to many points in Nebraska were made lower than the rates from Omaha to the same points by the amounts of these differentials. Equalization of the same character in favor of Lincoln to points 50 miles or more distant has been prescribed by the Nebraska commission under general order No. 19. Sioux City's outbound rates are now substantially higher than the rates from Omaha. Inasmuch as Omaha is given the Nebraska distance tariff rates with the exceptions previously stated, Lincoln's rates to the northeastern part of the state, under the differential adjustment, are substantially lower than that distance basis, and thus in greater measure lower than those from Sioux City.

In attacking this adjustment Sioux City points out that the greater part of the tonnage from the east received by Lincoln jobbers moves in carload lots under rates which exceed those to the Missouri River cities by the differential of 3 cents per 100 pounds, and is distributed outbound at the fourth-class differential of 4 cents under the Omaha rates. Emphasis is further placed upon the fact that part of Lincoln's inbound tonnage is received from the west at the same rates as are in effect to Omaha, and part from the south at rates in many instances the same as to Omaha, conditions asserted to have arisen since the Lincoln differentials were established, and which give Lincoln a rate advantage on distribution to the extent of its outbound differentials under the Omaha rates. Likewise it is urged that the differential equalization fails to take into account the tonnage which is manufactured in Lincoln or received from near-by Nebraska points.

Although not opposing in principle the policy of rate equalization, the substance of Sioux City's position is that it would be just to fix

outbound rates from both competing centers measured solely by distance. This Lincoln opposes with equal vigor. Frankly conceding that the changed relationships arising out of general order No. 19 have resulted in undue prejudice to Sioux City, Lincoln contends that no readjustment should be made which would go further than to restore the relationship which existed prior to the effective date of that order. Considerable evidence was introduced in support of this position, which we shall briefly summarize.

Lincoln, located in eastern Nebraska approximately 50 miles west of the Missouri River, is a jobbing and manufacturing center of recognized importance. In 1914 its jobbing business aggregated \$38,130,000 and the value of its manufactured products shipped to other points was \$17,850,000. What it defines as its trade territory extends beyond the borders of Nebraska and into part of South Dakota, the northern tier of counties in Kansas served by the Denver line of the Rock Island, and eastern Colorado and Wyoming. It competes not only with the Missouri River cities and the large centers east thereof, but with interior jobbing points, such as Beatrice, Grand Island, and Hastings. Lincoln's trade has been developed under the long established equalization of outbound rates already described. These outbound equalized rates are in effect to stations on the North Western and this is the territory as to which the controversy with Sioux City centers. Testimony was introduced intended to show that a large part of the merchandise distributed from Lincoln originates at points east of the Missouri River from which the differentials over the rates to Omaha apply. If deprived of her outbound equalization Lincoln fears a large loss of business to stations on the North Western and other lines in northeastern Nebraska where under the former adjustment Lincoln's aggregate business was considerably less than that of Sioux City. It is further pointed out that under that adjustment with respect to northeastern Nebraska rates from Sioux City were lower than from Lincoln to 28 of 33 stations on the Burlington and to 37 of 40 stations on the Omaha. It is admitted that Lincoln has an advantage in shipping commodities received from the south and west which it is asserted constitute a small portion of its aggregate jobbing trade.

It is urged in behalf of Lincoln that an inflexible distance basis of rates is undesirable for distributing purposes because of its limitation of competition, and that to require the establishment of rates based on distance alone would cause a serious disturbance of business conditions which have developed under a rate relationship of long standing to which those conditions have become adjusted. As compensation for Lincoln's apprehended loss of trade in northeastern Nebraska, Sioux City points out that Lincoln's differentials under

Omaha would be increased under a distance tariff to a large part of the South Platte territory to which Lincoln distributes 75 per cent of its less-than-carload shipments.

It is pertinent here to state that in behalf of Lincoln it is acknowledged that injustice to all of the complaining cities arises out of the relationships which are in issue. The position of Lincoln is clearly stated in the following paragraphs from the brief filed by that intervenor:

From 1888 until September, 1914, inbound and outbound rates between Lincoln, Fremont, and other interior jobbing points as they have developed on the one hand, and Missouri River jobbing cities on the other, were so adjusted by the defendant carriers to bring about an almost exact equalization, thereby enabling each and every one of the jobbing towns to compete for the trade in common territory on an equality with its neighbor. * * *

The Lincoln Commercial Club does not argue that under the present distributing rates applying from Omaha, Lincoln, and Fremont to Nebraska destinations, as authorized by the Nebraska State Railway Commission in its general order No. 19, and relative reductions not having been made in the rates from Sioux City, Council Bluffs, St. Joseph, Atchison, and Kansas City that an injustice has not been done to those jobbing points.

* * * * *
The position of Lincoln in this case is * * * that the relationship of rates between complaining cities and Lincoln which existed prior to June 1, 1914, and had been in effect continuously for over 25 years should be continued; that the equalization basis as worked out by the carriers in their early scheme of rate making and which in Nebraska has been followed by the state railway commission, as found in their general order 19, is fair and equitable to all.

The position taken by Lincoln is also that of Fremont.

For reasons substantially the same as those pointed out with reference to the Lincoln adjustment, Sioux City objects to the present equalization prescribed under general order No. 19 which has been accorded in outbound fourth-class rates from Grand Island, Hastings, and Norfolk.

The effect upon the business of Sioux City of the changed relationships of rates resulting from the application of the lower intra-state schedules was the subject of a large amount of testimony. Briefly stated, this evidence shows that Sioux City shippers have been placed at a disadvantage in doing business at Nebraska points by the rate relationships here complained of, that their shipments to and from that territory have been restricted, and that in some instances, in order to retain their trade, they have been forced to make allowances from invoices to equalize transportation costs with competing cities.

With reference to the adjustment complained of by Sioux City, it should be stated that the positions taken by Omaha and by defendants, as well as by Lincoln, concede that certain unjust discriminations are caused by the present relation of rates. In behalf of Omaha this

concession relates chiefly to points on the Omaha line, in part to points on the North Western, and to the differences in classification ratings applicable to interstate and intrastate traffic. As to stations on the line of the North Western, however, Omaha opposes Sioux City's desire for rates based upon distance, contending that the transportation conditions on traffic from Omaha are not the same as from Sioux City. The differences in these conditions, which were stated, are found in the fact that shipments from Sioux City must cross a bridge over the Missouri River and can not reach North Western stations by the line of that carrier except by a circuitous movement, or, in other words, that a two-line haul is involved unless the Omaha and the North Western are treated as one line. In answer to this Sioux City refers to the fact that Omaha offers no objection to the application of the Omaha basis of rates from Council Bluffs, although a bridge must be crossed in reaching Nebraska destinations, and that the Platte River must be crossed by shipments from Omaha and Lincoln to a large territory in that state. Representatives of both Omaha and Lincoln suggest that readjustments in favor of Sioux City be made by extension of the Nebraska classification to Sioux City and by reductions in the rates from Sioux City substantially corresponding to those which have been made from Omaha and Lincoln; that is, by the application of the Nebraska intrastate rates from Sioux City. As to stations on the North Western to which the rates from Sioux City and from Omaha were formerly the same, Omaha's suggestion is that the present rates from Omaha be applied from Sioux City. It is obvious that the application of the Nebraska distance scale from Sioux City would not wholly remove the discrimination which is thus conceded, for, as has been shown, this scale has been departed from in certain instances by according to Omaha rates lower than would be made by the application of that scale, and rates from several interior Nebraska cities have been made with an equalized relation to the rates from Omaha.

THE LOWER MISSOURI RIVER CITIES—ST. JOSEPH, ATCHISON, AND KANSAS CITY.

Much evidence was introduced by the lower Missouri River cities with reference to their importance as jobbing and manufacturing centers and the extent to which their trade is affected by the changed relationship of rates. It would serve no useful purpose to set forth this evidence in detail. It is sufficient to state that for many years each of these cities has enjoyed a trade of substantial proportions in Nebraska and has shipped annually a large tonnage to that state under class rates. Their jobbers and manufacturers are in active competition with jobbers and manufacturers located at Missouri

River points to the north and elsewhere, including interior Nebraska points.

The facts presented by these cities with reference to rate relationships are of the same general character, as are also the contentions based upon those facts. As has been stated, the class rates from these cities to Nebraska destinations were part of an adjustment of long standing in which distance was in large measure, although not entirely, disregarded. We shall outline in general terms the relation of rates from these cities compared with rates from Omaha as it existed prior to September 6, 1914, and as it now exists.

ST. JOSEPH.

St. Joseph is located on the Missouri River a few miles south of the southeastern corner of the state of Nebraska. For the purpose of showing the former relationships of rates from St. Joseph and from Omaha the complainant representing St. Joseph interests has divided the state of Nebraska into six territorial divisions based upon the differences in class rates from these two competing points as indicated by the spread in rates on first class.

Group No. 1 comprises a large territory in the southern and southwestern part of the state. In rough outline it embraces all Nebraska territory south and west of a line drawn north of Pawnee City, Beatrice, Strang, Hastings, Grand Island, and the Union Pacific Railroad to and including Martin. To destinations in this group the class rates from St. Joseph and Omaha were the same for 25 years or more prior to September 6, 1914. Taking 75 stations as representative of the group as a whole it is shown that the average distance to these stations from St. Joseph is 300 miles, from Omaha 236 miles. The following table shows the average rates prior to September 6, 1914, for the first five classes to the 75 stations in group No. 1 from both points of origin, the average present rates from Omaha, the differences between the present rates from St. Joseph and Omaha to this group, and the percentage by which the rates from St. Joseph exceed those from Omaha:

	1	2	3	4	5
Average rates from St. Joseph and Omaha prior to Sept. 6, 1914..	66.7	59.6	54.2	45.3	37.5
Average present rate from Omaha.....	60.8	51.6	42.6	35.0	27.1
Average rates from St. Joseph higher than from Omaha:					
In cents.....	5.9	8.0	11.6	10.3	10.4
In per cent.....	9.7	15.5	27.2	20.4	38.4

The average reductions under general order No. 19 from Omaha to these stations for the lettered classes and the percentages by which the present rates from St. Joseph exceed those from Omaha are, respectively, as follows: Class A, 3 cents, 9.9 per cent; B, 5.1 cents, 40 I. C. C.

24 per cent; C, 3.7 cents, 20.2 per cent; D, 1.3 cents, 8.5 per cent; E, 1.8 cents, 17.7 per cent.

Group No. 2 shows Nebraska territory to which, under the adjustment of rates in effect prior to September 6, 1914, the first-class rates were higher from St. Joseph than from Omaha by not more than 5 cents. It is in two sections. The first is in central Nebraska, and embraces chiefly the Pleasanton, Loup City, and Ord branches of the Union Pacific, the branches of the Burlington from and including Central City to Burwell, Sargent, and Ericson, and includes a few stations on the Alliance line of the Burlington west of Grand Island and east of Sweetwater. The second section of this group is a narrow strip of territory in the southeastern part of the state which embraces such stations as Tobias, Crete, Tecumseh, and Nemaha City. To 32 representative stations in group No. 2 the average distance from St. Joseph is 239 miles and from Omaha 159 miles. The following table shows the former and present adjustments for the first five classes to 32 representative stations in this group:

	1	2	3	4	5
Average present rates from St. Joseph.....	56.8	51.2	45.1	39.4	31.0
Average rates from Omaha prior to Sept. 6, 1914.....	53.1	47.1	41.0	34.5	28.9
Average rates from St. Joseph were formerly higher than from Omaha:					
In cents.....	3.7	4.1	4.1	4.9	2.1
In per cent.....	7.0	8.7	10.0	14.2	7.3
Average present rates from Omaha.....	44.8	38.1	31.4	26.8	20.2
Average present rates from St. Joseph are higher than from Omaha:					
In cents.....	12.0	13.1	13.7	12.6	10.8
In per cent.....	26.8	34.4	43.6	47.0	53.5
Average reduction in rates from Omaha:					
In cents.....	8.3	9.0	9.6	7.7	8.7
In per cent.....	18.5	23.6	30.6	28.7	43.1

Group No. 3 defines a territory to which prior to September 6, 1914, the first-class rates were higher from St. Joseph than from Omaha by more than 5 cents, but not more than 10 cents. It also is in two sections. The first embraces a large territory in the central and western part of the state. It includes all stations on the Alliance line of the Burlington from Sweetwater west, stations on the Burlington branches north and south of Alliance and west of Northport, all Union Pacific stations west of Brule and Martin, and all North Western stations west of Hay Springs. The second section is a narrow and irregular strip of territory in the southeastern part of the state which includes Aurora, Harvard, Lincoln, Wahoo, Talmage, and certain other near-by points. To 85 representative stations in this group the average distance from St. Joseph is 425 miles, from Omaha 335 miles. The following table shows the former

and present adjustments for the first five classes to the 85 stations taken as representative of this group:

	1	2	3	4	5
Average present rates from St. Joseph.....	100.3	90.2	78.5	66.2	53.1
Average rates from Omaha prior to Sept. 6, 1914.....	90.7	81.6	70.4	58.3	49.5
Average rates from St. Joseph were formerly higher than from Omaha:					
In cents.....	9.6	8.6	8.1	7.9	3.6
In per cent.....	10.6	10.6	11.5	13.5	7.3
Average present rates from Omaha.....	77.9	66.3	54.2	42.6	33.7
Average present rates from St. Joseph are higher than from Omaha:					
In cents.....	22.4	23.9	24.3	23.6	19.4
In per cent.....	28.8	36	44.8	55.4	57.6
Average reduction in rates from Omaha:					
In cents.....	12.8	15.3	16.2	15.7	15.8
In per cent.....	16.4	23.1	29.9	36.9	47.0

Group No. 4 comprises a territory in the eastern central part of the state to which the first-class rates prior to September 6, 1914, were higher from St. Joseph than from Omaha by more than 10 cents but not more than 20 cents. This group, roughly outlined, includes territory within lines drawn from a point between Ericson and Spalding in a southerly direction east of Central City and Aurora and the Burlington junction at Sutton, thence in an easterly direction south of Fairmont and Exeter, crossing the line of the Burlington between Exeter and Friend, and continuing to a point south of Milford. Thence extending northward east of Seward the line forms a loop which excludes Wahoo and continues southeasterly so as to include Nebraska City. Thence the line follows the Missouri River northward, continues northwest so as to include Plattsmouth, Ashland, and Platte River, and thence west between the lines of the Union Pacific and North Western to the point of beginning. To 208 representative stations in this group the average distance from St. Joseph is 213 miles, from Omaha 84 miles. The following table shows the former and present adjustments for the first five classes to 25 stations taken as representative of this group:

	1	2	3	4	5
Average present rates from St. Joseph.....	49.1	43.6	36.3	28.9	24.0
Average rates from Omaha prior to Sept. 6, 1914.....	34.3	29.6	25.6	21.2	16.6
Average rates from St. Joseph were formerly higher than from Omaha:					
In cents.....	14.8	14.0	10.7	7.7	7.4
In per cent.....	45.1	47.3	41.8	36.3	44.6
Average present rates from Omaha.....	30.1	25.7	21.2	18.0	13.6
Average rates from St. Joseph are higher than from Omaha:					
In cents.....	19.0	17.9	15.1	10.9	10.4
In per cent.....	62.8	69.7	71.2	60.6	76.6
Average reduction in rates from Omaha:					
In cents.....	4.2	3.9	4.4	3.2	3.1
In per cent.....	13.9	15.2	20.9	17.8	22.1

Group No. 5 embraces northeastern Nebraska and may be described in general terms as all that territory north of the groups which have been outlined. It includes all stations on the lines of the Burlington and Union Pacific from Omaha to the Platte River, all stations on the North Western east, north, and northwest of Fremont, including stations as far west as Hay Springs, all stations on the Burlington north of Fremont, and all stations on the Omaha. To this group the first-class rates prior to September 6, 1914, were higher from St. Joseph than from Omaha by more than 20 cents. This is the only territory as to which St. Joseph now contends that the rates are unreasonable *per se*, although the complaint broadly attacks the rates to all Nebraska destinations as inherently unreasonable. To 40 representative stations in this group the average distance from St. Joseph is 325 miles, from Omaha 170 miles. The following table shows the former and present adjustments to the stations taken as representative:

	1	2	3	4	5
Average present rates from St. Joseph.....	85.5	73.9	61.3	48.7	38.7
Average rates from Omaha prior to Sept. 6, 1914.....	53.7	47.2	40.7	32.8	26.5
Average rates from St. Joseph were formerly higher than from Omaha:					
In cents.....	31.8	26.7	20.6	15.9	12.2
In per cent.....	59.2	56.6	50.6	48.5	46.0
Average present rates from Omaha.....	47.3	40.2	32.9	27.0	20.8
Average rates from St. Joseph are higher than from Omaha:					
In cents.....	38.2	33.7	28.4	21.7	17.9
In per cent.....	81.0	83.8	86.3	80.4	86.1
Average reduction in rates from Omaha:					
In cents.....	6.4	7.0	7.8	5.8	5.7
In per cent.....	13.5	17.4	23.7	21.0	27.4

Comparisons have been made between rates from St. Joseph to 10 representative points in Nebraska north and west of Omaha, to which the short-line distance from St. Joseph makes on Omaha, with rates from Omaha to a like number of points in Kansas and Missouri, to which the short-line distance from Omaha makes on St. Joseph. The average distance from each point of origin to the selected destinations is substantially the same. By these comparisons it is shown that the rates from St. Joseph, via Omaha, to the Nebraska destinations exceed the rates from Omaha to the same destinations by:

Classes -----	1	2	3	4	5	A	B	C	D	E
Cents.....	38.8	34	29.9	23.8	19.5	14.6	13.7	11	8	7

The rates to the destinations in Kansas and Missouri from Omaha, via St. Joseph, exceed the rates from St. Joseph to the same destinations by:

Classes -----	1	2	3	4	5	A	B	C	D	E
Cents.....	19.4	16.5	12	9.1	7.5	10.2	8.5	7.8	6.7	5.8

The Omaha differentials in rates on first class over the rates from St. Joseph to Kansas points do not exceed 20 cents. The following illustrations are given of these differentials to points of destination in Kansas:

To—	1	2	3	4	5	A	B	C	D	E
Hutchinson.....	20	18	15	12	10	11	9	8	7	6
Dodge City.....	20	14	3	0	0	10	9	8	7	6
Liberal.....	20	11	1	0	0	7	7	8	7	6

From Liberal west to the Colorado state line there is a gradual reduction of these differentials until the rates from Omaha and St. Joseph are equal, based upon the rates to Colorado common points as maxima.

Group No. 6 comprises a small territory in the extreme southeastern corner of Nebraska which includes stations from Rulo to Table Rock on the Burlington and a few stations north of this line on the Burlington and Missouri Pacific. To six representative stations in this group the average distance from St. Joseph is 64 miles, from Omaha 119 miles. Prior to September 6, 1914, the rates from St. Joseph were lower to stations in this group than from Omaha. No complaint is made by St. Joseph of the present relation of rates to group No. 6.

The reductions in rates from Omaha for the first five classes as shown in the foregoing tables, when averaged, amount to 18 per cent for group No. 1, 20 per cent for group No. 2, 25 per cent for group No. 3, 17 per cent for group No. 4, and 19 per cent for group No. 5. Since these tables were prepared for the record in this case a few reductions have been made from St. Joseph. These may be summarized as follows: Group No. 1, reduction to one station in the sum of 1 cent on the fourth class; group No. 2, reduction to 8 stations on fourth class, averaging 1.1 cents; group No. 3, reduction to 48 stations for the first four classes, averaging 4.6 cents, decreasing to 21 per cent the rate disadvantage sustained by St. Joseph as the result of the reductions on these classes to points in this group. These reductions are confined largely to stations in the extreme western section of Nebraska.

It has been pointed out that in the adjustment of interstate rates from the lower Missouri River cities to Nebraska, distance was in large measure disregarded. These interstate rates are in many instances on a lower basis per mile than the interstate rates from Council Bluffs and Sioux City; they are lower in many instances than the Nebraska scale of intrastate rates; in other instances they are higher. It is obvious, therefore, that comparisons of interstate

rates from the lower Missouri River cities with the Iowa-Nebraska and other interstate scales would merely multiply illustrations of the differences already noted between the rates from Council Bluffs and Sioux City and those scales as shown in the foregoing tables. In the following table taken from defendants' evidence are shown the present rates and distances from St. Joseph to Dawson, Endicott, Bostwick, and Holdrege, rates for the same distances under the Iowa-Nebraska scale, under the present terminal rates from St. Joseph to points in Kansas on the Atchison, Topeka & Santa Fe, and under the Nebraska distance tariff. The first five classes are taken as representative of all classes:

From St. Joseph to—	Miles.	1	2	3	4	5
Dawson:						
Present rates.....	68	30.0	25.0	22.0	18.0	13.0
Iowa-Nebraska scale.....	68	36.0	30.0	24.0	18.0	14.0
St. Joseph-Kansas.....	68	29.0	24.0	19.0	15.0	10.0
Nebraska intrastate scale.....	68	27.0	23.0	18.9	16.2	12.2
Endicott:						
Present rates.....	150	45.0	40.0	33.0	24.0	20.0
Iowa-Nebraska scale.....	150	52.0	43.0	34.0	26.0	21.0
St. Joseph-Kansas.....	150	51.0	43.0	36.0	28.0	24.0
Nebraska intrastate scale.....	150	43.0	36.6	30.1	25.8	19.4
Bostwick:						
Present rates.....	212	51.0	45.5	38.0	30.0	26.0
Iowa-Nebraska scale.....	212	65.0	55.0	43.0	33.0	26.0
St. Joseph-Kansas.....	212	60.0	53.0	46.0	37.0	31.0
Nebraska intrastate scale.....	212	57.0	48.5	39.9	34.2	25.7
Holdrege:						
Present rates.....	284	64.0	59.0	52.0	45.0	35.0
Iowa-Nebraska scale.....	284	77.0	65.0	51.0	39.0	31.0
St. Joseph-Kansas.....	284	73.0	63.0	55.0	48.0	38.0
Nebraska intrastate scale.....	284	71.0	60.4	49.7	42.6	32.0

It is also shown by this complainant that in many instances the rates from St. Joseph to points in Nebraska exceed the sums of the intermediate rates based on Omaha, Lincoln, Grand Island, Hastings, or Kearney. Numerous illustrations of this were given. The maximum amounts noted in these exhibits by which the through rates exceed the sums of the intermediate rates are the following:

Classes--	1	2	3	4	5	A	B	C	D	E
Cents ---	21	19	23	27	28	19	21	14	12.2	10.6

The interstate rates, however, do not violate the fourth section, as contended by the St. Joseph complainant, for the intrastate rates have not been made applicable to interstate transportation and thus are not subject to the provisions of the act.

The distances from St. Joseph to Nebraska destinations exceed those from Omaha except as to a small territory in the southeastern part of the state. The average difference in distance to representative stations in groups 1 to 5 is 64, 80, 90, 129, and 155 miles, respectively. While urging that these differences are comparatively small, St. Joseph lays particular stress upon the distances from Mississippi River crossings to Nebraska points through St. Joseph, as

compared with the distances from those crossings to the same points through Omaha. The origin of a large part of the merchandise shipped by jobbers and other dealers from St. Joseph to Nebraska destinations is on or east of the Mississippi River. The rates inbound on this merchandise in general are the same to St. Joseph, Omaha, and the other Missouri River crossings. This, St. Joseph contends, is an equalization of rates in disregard of distances and should be considered in dealing with the outbound adjustment of rates to Nebraska points. The short-line distance between the rivers ranges from 196 miles to Kansas City, 206 miles to St. Joseph, 290 miles to Omaha, and 360 miles to Sioux City, or an extreme equalization as between Kansas City and Sioux City of 164 miles, or 45 per cent. From the several Mississippi River crossings the average of all lines to Omaha is 350 miles, to St. Joseph 297 miles, or an average in favor of St. Joseph of 53 miles. From St. Louis the average of all lines to St. Joseph is less than to Omaha by 151 miles. The official distance tables of the carriers show, however, that from Chicago the distances to the several Missouri River crossings are more nearly equal. Of the defendant carriers the Burlington, Rock Island, and Missouri Pacific have through routes from Mississippi River crossings by way of St. Joseph and Omaha to representative points in Nebraska. The following table shows the distance relationship of the movement of freight inbound to these two competing points and outbound to representative Nebraska destinations located in the groups which we have described:

Groups and railroads.	Number of stations.	Average distance via—		Distance in favor of—	
		Omaha.	St. Joseph.	Omaha.	St. Joseph.
No. 1 (75 stations):		<i>Miles.</i>	<i>Miles.</i>	<i>Miles.</i>	<i>Miles.</i>
C., B. & Q.....	49	619.8	589.3	.....	30.5
C., R. I. & P.....	6	611	499	.....	112
Mo. Pac.....	5	809	545	.....	264
No. 2 (32 stations):					
C., B. & Q.....	24	500	538.2	.....	21.8
C., R. I. & P.....	1	569	483	.....	86
Mo. Pac.....	2	597	488	.....	109
No. 3 (85 stations):					
C., B. & Q.....	54	752.7	756.9	4.2	.....
C., R. I. & P.....	1	532	484	.....	48
Mo. Pac.....	4	587	497	.....	90
No. 4 (25 stations):					
C., B. & Q.....	15	493	492	.....	1
Mo. Pac.....	4	525	495	.....	40
No. 5 (40 stations): C., B. & Q.....	8	550	580	30	.....
No. 6 (6 stations):					
C., B. & Q.....	6	525	378	.....	147
Mo. Pac.....	2	585	427	.....	158

NOTE.—The distances via the Burlington are from Galesburg, Ill., and St. Louis to destination; via the Rock Island, from Rock Island, Ill., and St. Louis; and via the Missouri Pacific, from St. Louis.

The testimony indicates that from 75 to 80 per cent of the freight distributed from St. Joseph to Nebraska stations moves over the
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lines of the three carriers named in the foregoing table. Of the other lines the average through distance is less by way of St. Joseph than by way of Omaha to eight representative stations in group No. 1 on the line of the Grand Island, but as to stations on the Union Pacific, North Western, and the Omaha the through distances are greater than by way of Omaha.

ATCHISON.

Atchison is located on the west bank of the Missouri River 20 miles south of St. Joseph. It has direct connection with Nebraska points over the rails of the Burlington, the Missouri Pacific, and the Rock Island. The lines of the Burlington from Atchison and St. Joseph converge at Rulo, on the west bank of the Missouri River in the southeastern part of the state. To Nebraska points beyond this junction the Burlington distances are about 2 miles greater from Atchison than from St. Joseph. Merchandise for Burlington stations in Nebraska moves via Rulo; that for Missouri Pacific points via that line directly, entering Nebraska at a point approximately 45 miles north and west of Atchison; that for Rock Island points through St. Joseph; and that for Grand Island points over the Missouri Pacific to Hiawatha, Kans., thence via the Grand Island.

The evidence submitted in support of the allegations of the Atchison complaint is in all important respects the same as that which has been summarized in connection with the St. Joseph case. It does not, therefore, require restatement. Atchison has always been grouped with St. Joseph in making rates to the territory here involved. In view of the small difference in distance, the similarity of transportation conditions, and the long established principle of rate equalization heretofore described, the propriety of this relationship is not questioned by the parties to these cases. It follows that the rate comparisons, outlining the former adjustment of rates with competitive Nebraska cities and the readjustments which have resulted from general order No. 19, apply equally to Atchison as to St. Joseph.

KANSAS CITY.

Kansas City, located 63 miles south of St. Joseph, is served directly by all the defendants except the Grand Island, the North Western, and the Omaha. The evidence submitted by Kansas City as to rate relationships does not require extended statement. To many points in the South Platte territory the rates from Kansas City are the same as from St. Joseph and Atchison, and in this connection it may be noted that these points of origin are also grouped in rates applicable in the opposite direction to a large territory south, southwest, and southeast of Kansas City.

Kansas City makes no complaint as to the present relation of rates to part of the southeastern Nebraska territory. This section is roughly described as bounded by a line drawn southwest from Omaha running north of Lincoln to a point south of Seward, thence in a southerly direction east of Fairbury to the Kansas-Nebraska line. The rates from Kansas City and Omaha to this part of the state prior to September 6, 1914, were approximately the same, and the changes have not been such as to cause complaint.

Kansas City's complaint centers chiefly in the relation of rates to the southern and southwestern Nebraska territory which lies west of the section just described. In the following table we show the relation of rates prior to September 6, 1914, and the present relation to this territory by stating the first and fourth class rates, as well as the distances from Kansas City and Omaha to representative stations. For the purpose of further showing the relation complained of by St. Joseph, as well as the relation as between Kansas City and St. Joseph, rates and distances from the latter city are included. The rates from Omaha in the first column, designated "former," were in effect prior to September 6, 1914; those in the second column are the present rates from the three cities.

	Miles.	First class.		Fourth class.	
		Former.	Present.	Former.	Present.
To Fairbury from—					
Omaha.....	112	45.0	36.0	24.0	21.6
Kansas City.....	206	.....	45.0	.....	24.0
St. Joseph.....	153	.....	45.0	.....	24.0
To Tobias from—					
Omaha.....	116	43.0	36.0	25.0	21.6
Kansas City.....	220	.....	51.0	.....	29.0
St. Joseph.....	169	.....	45.0	.....	25.0
To Fairmont from—					
Omaha.....	108	35.0	35.0	25.0	21.0
Kansas City.....	241	.....	51.0	.....	30.0
St. Joseph.....	190	.....	47.0	.....	27.0
To Hastings from—					
Omaha.....	152	51.0	42.0	30.0	25.2
Kansas City.....	287	.....	56.0	.....	33.0
St. Joseph.....	227	.....	51.0	.....	30.0
To Superior from—					
Omaha.....	174	51.0	48.0	30.0	28.8
Kansas City.....	245	.....	51.0	.....	30.0
St. Joseph.....	205	.....	51.0	.....	30.0
To Kearney from—					
Omaha.....	186	55.0	51.0	37.0	30.6
Kansas City.....	303	.....	65.0	.....	47.0
St. Joseph.....	268	.....	55.0	.....	37.0
To Holdrege from—					
Omaha.....	206	64.0	55.0	45.0	33.0
Kansas City.....	334	.....	70.0	.....	50.0
St. Joseph.....	284	.....	64.0	.....	45.0
To Culbertson from—					
Omaha.....	294	77.0	73.0	54.0	40.0
Kansas City.....	411	.....	82.0	.....	54.0
St. Joseph.....	360	.....	77.0	.....	54.0
To North Platte from—					
Omaha.....	281	78.0	71.0	54.0	42.0
Kansas City.....	398	.....	98.0	.....	60.0
St. Joseph.....	363	.....	78.0	.....	55.0

An analysis of the relation of rates stated in the foregoing table shows quite clearly the facts upon which the complaints of the lower Missouri River cities are predicated. In the South Platte territory of Nebraska the relation of rates from Omaha, Kansas City, and St. Joseph was formerly very close. To many points the rates were the same, as, for example, Fairbury and Superior. To other points, such as Fairmont, the spread in fourth-class rates between Omaha and St. Joseph was but 2 cents, between Omaha and Kansas City 5 cents, Omaha taking the lower rate in each instance. At the same time the first-class rate from Omaha was 12 cents less than from St. Joseph and 16 cents less than from Kansas City. Still another basis is found at Kearney, where the first and fourth class rates were formerly the same from Omaha and St. Joseph, while from Kansas City the rates were 10 cents higher on each class. To Holdrege the fourth-class rate from Omaha and St. Joseph was 45 cents, from Kansas City 5 cents higher, while farther west at Culbertson the first-class rate from Omaha and St. Joseph was 77 cents, from Kansas City 82 cents, while from all three cities an equalized fourth-class rate of 54 cents applied. This close relation of fourth-class rates, under which moves the greater part of the less-than-carload shipments by jobbers, is characteristic of the adjustment formerly in effect.

The table shows clearly that the equalization of rates from Omaha, St. Joseph, and Kansas City was made largely in disregard of distance, for the distance is uniformly less from Omaha than from the lower Missouri River cities. The reduced intrastate rates to southern and southwestern Nebraska from Omaha have resulted in a present relation which St. Joseph and Kansas City urge is unjustly discriminatory even if distance is considered as a moving factor, the propriety of which they do not concede. Thus as between St. Joseph and Omaha, comparing distances and fourth-class rates, it appears that at Tobias the distance is less from Omaha by 53 miles and the present spread in fourth-class rates is 3.4 cents; at Fairmont the difference in distance is 82 miles and the spread 6 cents; at Hastings the difference is 75 miles and the spread 4.8 cents; at Kearney the difference is 82 miles and the spread 6.4 cents; at Culbertson the difference is 66 miles and the spread 14 cents; at North Platte the difference is 82 miles and the spread 13 cents. At the present time the spread as between Kansas City and Omaha is much greater in rates to destinations in southern Nebraska than in northern Kansas. The rate relation at Fairbury has been noted in the foregoing table. To points in Kansas such as Belleville and Mankato, which are on the line of the Rock Island running southwest from Fairbury, the

rates from Kansas City and Omaha are the same for all classes. To Oberlin and St. Francis, terminal branch-line points of the Burlington in Kansas, the first-class rates are the same while the fourth-class rates are 1 and 2 cents lower, respectively, from Omaha than from Kansas City. Prior to April 1, 1916, the fourth-class rates were 5 and 4 cents lower, respectively. The close relationship of rates from these cities to points in northern Kansas was considered by the Commission in a recent report made upon petition for modification of our order in the *Iowa-Nebraska Case*. We there said:

The findings of the Commission in the *State of Kansas Case*, 27 I. C. C., 673, that the rates * * * here involved did not warrant reduction, and the long sustained adjustment whereby rates are the same from all Missouri River cities, are sufficient to lead to the conclusion that the present rates from Omaha to the Kansas destinations under consideration, which are now the same as the rates from Kansas City, are not unreasonable. 34 I. C. C., 379.

The former and present relations of first and fourth class rates from Omaha, Kansas City, and St. Joseph to a few Nebraska stations north of the Platte River are shown in the following table:

	Miles.	First class.		Fourth class.	
		Former.	Present.	Former.	Present.
To Grand Island from—					
Omaha.....	147	51.0	42.0	30.0	25.2
Kansas City.....	290	.....	60.0	.....	35.0
St. Joseph.....	239	.....	51.0	.....	30.0
To Norfolk from—					
Omaha ¹	119	35.0	36.0	21.0	20.0
Kansas City.....	317	.....	70.0	.....	40.0
St. Joseph.....	267	.....	65.0	.....	35.0
To Alliance from—					
Omaha.....	416	100.0	95.0	51.0	49.0
Kansas City.....	559	.....	121.0	.....	72.0
St. Joseph.....	508	.....	111.0	.....	65.0

¹ Via the North Western and the Union Pacific. From Omaha to Norfolk via the Omaha general order No. 19 names rates, first class, 37; fourth class, 20.

The following table shows a comparison of rates from Kansas City to Holdrege, with rates for the same distance under the Iowa-Nebraska scale, under the present terminal rates from Kansas City to points in Kansas on the Union Pacific, and under the Nebraska distance tariff:

From Kansas City to Holdrege.	Miles.	1	2	3	4	5
Present rates.....	334	70.0	66.0	57.0	50.0	41.0
Iowa-Nebraska.....	334	83.0	70.0	55.0	42.0	33.0
Kansas City, Mo.-Kans.....	334	80.0	70.0	64.0	57.0	47.0
Nebraska scale.....	334	81.0	68.9	56.7	48.6	36.6

Kansas City urges, without opposition from St. Joseph, that it should be grouped in most instances with that city in making rates to Nebraska, inasmuch as these points take the same rates to a large territory in the opposite direction. In view of the long established principle of rate equalization under which trade has developed, and the comparatively shorter distances to many Nebraska destinations from the Mississippi River through the lower Missouri River crossings than through Omaha, Kansas City urges that outbound rates to Nebraska from the competing cities here concerned should not be based upon distance as the controlling factor.

In this connection we are referred to *Kansas City Transportation Bureau v. A., T. & S. F. Ry. Co.*, 16 I. C. C., 195, in which we said, as to rates on grain eastbound through Kansas City and Omaha:

The adoption of distance alone as a measure of the rates from points of origin to the primary market would necessarily result in a clear division of the territory between the markets, and would be destructive of competition in most of that territory. It would destroy the long established adjustment which places Missouri River crossings substantially on a parity in both inbound and outbound rates on traffic generally. Giving to Kansas City all of the advantage that could come to it from a mileage adjustment would give it a monopoly of territory in which Omaha now freely competes with Kansas City, and the application of the same rule to Omaha would give it exclusive purchasing power in territory in which Kansas City now competes with Omaha on equal terms.

It is evident that distance has been disregarded in the past, in part at least, as a result of competition between the carriers. The Grand Island, for example, which serves St. Joseph, reaches 19 stations in Nebraska, of which 8 are reached by lines from Omaha. It must meet the rates contemporaneously in effect from Omaha or lose a substantial part of its tonnage. The record also indicates that the Missouri Pacific has been an important factor in establishing the competitive relation of rates from Kansas City and Omaha to the territory in southeastern Nebraska.

The Nebraska commission has made rate comparisons intended to show that no unjust discrimination exists against the lower Missouri River cities and that the rates from Omaha are not unduly low. Rates on first class are shown with distances from St. Joseph and Omaha to the 75 stations taken as representative of group No. 1 above referred to. With these rates comparison is made of first-class rates to the same destinations from Omaha which would result if reconstructed on the measure per mile of the present rates from St. Joseph. The use of first-class rates is explained by the fact that where the Nebraska scale applies the rates on other classes are constructed upon a percentage relationship to first class, which, as will be shown, has received general approval on this record. Similar

comparisons have been made by the St. Joseph complainant, extended, however, so as to include the rates for the first four classes. It is thus shown that the rates so made from Omaha on first class would be lower than at present to 69 stations and higher to 6 stations; on second class lower to 61 stations, higher to 10 stations; on third class lower to 23 stations, higher to 44 stations; on fourth class lower to 25 stations, higher to 45 stations. In a few instances no change would result from this method of reconstructing rates from Omaha. It thus appears that the differences in rates per mile which are emphasized by the Nebraska commission as to first class are substantially modified when the comparison is extended to the second, third, and fourth classes.

A similar comparison made by the Nebraska commission with reference to first-class rates to 52 destinations from Kansas City shows that the present rates from Omaha to 45 of these destinations would be decreased if made on the measure per mile of the rates from Kansas City. The record contains no statement of this comparison as to the other classes. These comparisons do not take into consideration the lower rate per unit of weight per mile which is conceded to be proper for the longer distances, although it is urged by the Nebraska commission that the large decreases referred to are sufficient to make allowance for that principle. St. Joseph takes the position that comparisons of this character should not be considered upon the issue of unjust discrimination, urging as a reason that inasmuch as rates from Nebraska distributing points have been made largely upon the principle of equalization it would be manifestly unjust to test the rates from St. Joseph by distance alone. In our review of the defendants' evidence, *infra*, is stated a comparison of present rates from Omaha and St. Joseph, averaged, to all Nebraska stations located within 10-mile distance groups, which should be considered in connection with the allegation of unjust discrimination made by St. Joseph and the rate per mile comparisons made by the Nebraska commission.

Omaha, as we have stated, concedes the existence of unjust discrimination against Council Bluffs and Sioux City and as to those points does not oppose the restoration of the former relation of rates, but Omaha does object to the restoration of the former relation as between that city and the lower Missouri River cities, urging that the rates from those cities to Nebraska destinations have not been shown to be unreasonable *per se*; that the present relation does not cause undue discrimination, and upon the further ground that the former relation was unjust to Omaha, depriving that city of the advantages due to its geographical location. These advantages of location upon which Omaha relies are based in large measure on

comparative distances. It is shown that the distance from Omaha to all stations in Nebraska, except five, is less than from Kansas City, and further that the distances from Omaha to Nebraska points are less than from St. Joseph to all stations except those situated in a comparatively small section in the southeastern part of the state. Thus it is pointed out that if rates were made on a basis of distance alone the rates from Omaha to the greater number of Nebraska destinations would be materially less than from the lower Missouri River cities.

In connection with the position thus taken that the lower Missouri River cities have enjoyed in the past a more favorable basis of rates than Omaha, distance considered, Omaha has made a comparison of rates from that point southward into Kansas. The present rates from Kansas City, Atchison, and St. Joseph to Lincoln, Omaha, and the greater part of the intermediate Nebraska territory for the first four classes are 40, 35, 28, and 23 cents, respectively. If these rates were applied from Omaha for equivalent distances into Kansas they would be effective to points as far south as Manhattan and Topeka. The present rates from Omaha, however, to Manhattan and Topeka for the same classes are 49, 42, 34, and 27 cents, respectively.

Emphasis was also placed by the Omaha interests upon the effect of transportation service in the distribution of merchandise as compared with the relative adjustment of rates. Some witnesses testified that the element of prompt service is the more important of the two, and that better service is accorded to the lower Missouri River cities than to Omaha on shipments to the South Platte territory. It is pointed out that equalization of transportation costs in certain instances was made prior to September 6, 1914. It is also shown that the competing cities interested in this case have to a certain extent been able to overcome the element of distance, and thus have secured substantial business in territories which are comparatively remote and are nearer a competing center. The conclusion reached by Omaha from this testimony is that the superior service rendered by the carriers to the lower Missouri River cities on shipments to southern Nebraska compensates them for their geographical and rate disadvantage under the present adjustment. The evidence offered by Omaha as to comparative service was of a general character, however, and contained no reference to train schedules. It may be doubted, in view of the facts here disclosed, whether Omaha's evident desire for better service is consistent with that city's suggestion that the lower intrastate rates be made the measure of rates for interstate transportation.

Similarly Omaha and the other interveners vigorously oppose the contention of the lower Missouri River cities that the inbound dis-

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tances and rate adjustment should be reflected in making rates outbound. As has been stated, the lower cities have taken the position that inasmuch as distance has been disregarded in establishing uniform inbound rates from the east it should also be disregarded in the making of outbound rates, and that the proportionately shorter distances from the Mississippi River to the lower Missouri River cities should be taken into consideration as an offset to the greater distances from those cities to the points of destination here involved. In denying the validity of this contention it is pointed out that the lower cities distribute a substantial amount of manufactured products such as confectioneries, sash and doors, building material, boxes, barrels, furniture, bank fixtures, vinegar, soap, bolts and nuts, petroleum products, and sugar bags, which should be considered as originating at those points; that inbound rates from the south to Kansas City are lower than to Omaha on a number of articles such as lumber and articles taking lumber rates, pig iron, steel billets and blooms, rice, salt, fruit jars, burlap, jute, and cottonseed oil. On the other hand, the rates on sugar and coffee, important articles of distribution, from New Orleans to Kansas City, St. Joseph, Atchison, and Omaha are the same. It was also shown that for seven months of the year Kansas City enjoys service by water from St. Louis at rates lower than those charged by the rail lines. It is thus urged that if outbound rates from Kansas City to stations in Nebraska were made with reference to the Missouri River rate adjustment from the east they would not reflect these conditions which are advantageous to the lower Missouri River cities and would deny to Omaha the advantage of her location on the outbound adjustment. Likewise it is pointed out that the rates to the Missouri River from the east and south are in a large measure the product of competition between railroads which are not parties defendant and against which no order could be made in these cases. These lines are the Chicago & Alton, the Chicago Great Western, the Chicago, Milwaukee & St. Paul, the Wabash, the Atchison, Topeka & Santa Fe, the Missouri, Kansas & Texas, and the St. Louis & San Francisco. The Chicago Great Western, the Chicago, Milwaukee & St. Paul, and the Wabash reach Omaha, and the Atchison, Topeka & Santa Fe reaches Superior. With these exceptions these lines do not enter the state of Nebraska. The lines of the Union Pacific and the Grand Island do not extend east of the Missouri River, except to Council Bluffs and St. Joseph, respectively.

The effects of the present relation of rates upon the trade of the lower Missouri River cities in the state of Nebraska are in substance the same as those which have been described with reference to Council Bluffs and Sioux City. Substantial loss and restriction of inter-

state shipments are shown and many instances are cited of trade which has been retained by equalization of transportation costs.

In behalf of Denver it was stated that the relative adjustment of rates from that city and from Nebraska centers of distribution, such as Omaha, to points in western Nebraska prior to the reduction of intrastate rates from Omaha was in general satisfactory. It urges that the present relation operates to its disadvantage. The following table shows the former and present relation of rates from Denver and Omaha to North Platte:

To North Platte from—	1	2	3	4	5
Omaha (281 miles):					
Former.....	78.0	71.0	65.0	54.0	47.0
Present.....	71.0	60.4	49.7	42.0	32.0
Difference.....	7.0	10.6	15.3	12.0	15.0
Denver (278 miles).....	94.0	74.0	62.0	52.0	44.0

The present rates yield mills per ton-mile as follows:

From—	1	2	3	4	5
	Mills.	Mills.	Mills.	Mills.	Mills.
Denver.....	67.6	53.2	44.6	37.4	31.6
Omaha.....	50.5	43.0	35.7	29.9	22.8
Difference.....	17.1	10.2	8.9	7.5	8.8

In connection with the Denver adjustment it is urged by defendants that as to commodities received from the east a back haul is involved in reaching Nebraska stations, but in *Sioux City Commercial Club v. C. & N. W. Ry. Co.*, 22 I. C. C., 110, this point was held to be immaterial. Denver enjoys a trade of substantial importance in the western part of the state now carried on under difficulties which have been increased by the reduction of Nebraska intrastate rates.

CLASSIFICATION DIFFERENCES.

Differences in classification ratings and exceptions are also alleged to cause unjust discrimination against the complaining cities. The western classification and exceptions thereto apply to transportation between those cities and points in Nebraska. Upon traffic from Omaha to Iowa points the Iowa classification has been made applicable. The Nebraska classification and exceptions thereto apply to intrastate transportation between points in the state of Nebraska. The following table shows the ratings named in the western classification

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cation and exceptions thereto, and in the Nebraska classification for some of the commodities with which the evidence deals:

Description.	Western classification No. 53 class ratings, or exceptions, governing interstate Nebraska traffic.	Nebraska classification class ratings, or exceptions, governing intrastate Nebraska traffic.
Agricultural implements returned for repairs.....	(1)	(2)
Candy, less than carload.....	3	3
Rope, one-fourth inch or over in diameter, in coils or on reels, not burlapped, less than carload.....	2	3
Crackers, less than carload.....	2-1-1½	3
Iron pumps, loose, less than carload.....	2	3
Sorghum seed, less than carload.....	3	4
Galvanized-iron watering troughs, s. u., not nested, less than carload.....	1½	1
Galvanized-steel tanks, carload.....	4	5
Gasoline-engine trucks, k. d., less than carload.....	1	3
Carpenters' moldings (house trimmings), less than carload.....	3	4
Door, screen, and window frames, less than carload.....	1	3
Petroleum oil and its products, less than carload.....	3	70% of 4
Petroleum oil, carload.....	5	70% of 5
Apples and pears, carload.....	5	(4)
Egg cases, new.....	1	4
Eggs in standard cases, less than carload.....	2	2
Eggs in nonstandard cases, less than carload.....	1	3

1 Rating on new implements.
2 One-half rating on new implements.
3 If declared average value is 15 cents per pound or less.
4 Special distance tariff somewhat lower than 85 per cent of class B.

The testimony shows that western classifications Nos. 43 and 44 were authorized by the Nebraska commission for intrastate transportation. When western classification No. 45 became effective that commission made an investigation of the changes in ratings and carload minima as between western classifications Nos. 42 and 45. It was found that the aggregate carload minima, in pounds, had been increased about 20 per cent. The tabulation of these increases and of changes in ratings were made a part of this record. Based upon these tabulations and other data the Nebraska commission made a classification for intrastate shipments in which the descriptions are based upon western classification No. 50 and the ratings and carload minima upon western classification No. 44. Lower ratings and minima were prescribed in certain instances after formal complaints and hearings. It was stated that the differences between the Iowa classification which the carriers have made effective for shipments from Omaha to Iowa destinations and the current western classification are greater than between the western and the Nebraska classifications. The item "candy" rated third class in the Nebraska classification when the declared average value is 15 cents per pound or less is so rated in the Iowa classification. Under western classification No. 50, candy and certain related articles, having an invoice value not exceeding 15 cents per pound and so receipted for, were

rated third class, less than carload, and when the invoice value exceeded 15 cents per pound or the value was not stated, first class, less than carload. Under western classification No. 51 certain articles were eliminated from the confectionery list and candy, regardless of value, was rated second class, less than carload. These changes were approved in the *Western Classification Case*, 25 I. C. C., 442. Neither complainants nor defendants offered any evidence in the case now before us as to the propriety of the ratings upon which the charges of unjust discrimination are predicated. It is conceded, however, by all parties of record that the same classification ratings should apply to shipments transported from all of the Missouri River cities and from cities in Nebraska with which they compete for the trade of that state.

RATE REDUCTIONS UNDER THE IOWA-NEBRASKA SCALE.

The position of the carriers in these cases makes necessary a statement of the situation which existed at the time they were required to make effective the rates named in general order No. 19. At that time they had in effect the rates prescribed by this Commission in the *Iowa-Nebraska Case, supra*. The complaint in that case was brought by the Iowa State Board of Railroad Commissioners and its occasion in part was certain unjust discrimination alleged to exist because the combination of rates from the east into interior Iowa, plus the rate from the interior Iowa point to destinations in Nebraska, exceeded the combinations upon the Mississippi River and upon the Missouri River. The Commission found that this discrimination in fact existed, and in its decision, which was announced in June, 1913, a distance scale of interstate rates was set forth to which the parties were invited to file objections. A further hearing was accorded and the earlier decision was in certain respects modified to meet such objections as seemed valid. Our order was entered December 1, 1913, requiring the carriers to establish on or before April 1, 1914, and to apply from interior points in the state of Iowa to all points in the state of Nebraska and to points in the state of Kansas on and north of the main line of the Atchison, Topeka & Santa Fe to La Junta, Colo., a distance scale of class rates not in excess of those found to be reasonable. The effective date of our order was subsequently postponed to June 1, 1914. In our supplemental report in that case, 28 I. C. C., 563, we said with reference to the scale found to be reasonable:

The carriers point out that this scale is so low that in some instances the rate from the Missouri River point to a Nebraska destination will exceed the rate from some Iowa point farther east. This means that our scale is lower than the Nebraska state scale. In case of any intermediate point in the state

of Iowa or upon the Iowa side of the Missouri River, the fourth section must apply and the rate must be reduced. That would probably not follow as a matter of law with rates wholly in the state of Nebraska.

Both parties call attention to the fact that at the present time there are some instances where the sum of the local Iowa state rate, added to the local Nebraska rate, makes a less through charge than our schedule, and the suggestion is that if the Nebraska rates are reduced these instances will be multiplied. Upon this point it can only be said that the rates which we prescribe for the through movement are, in our opinion, reasonable.

The rates prescribed by the Commission in the *Iowa-Nebraska Case* were made to apply from James, the first station east of Sioux City, and from Neoga, Iowa, the first station east of Council Bluffs. Under the application of the fourth section the rates for certain classes from those cities to stations in Nebraska, distant 200 miles or more, were reduced by substantial amounts. The following table shows typical instances of such reductions in rates from Council Bluffs to stations on the main line of the Burlington:

Council Bluffs to—	Miles.	1	2	3	4	5	A	B	C
Funk.....	222	.....	.....	5.0	8.0	4.5	.....	.....	.....
Oxford Junction.....	249	.....	1.0	9.0	11.0	10.5	1.5	.....	0.5
Holbrook.....	272	.....	1.0	10.0	10.0	13.5	.....	1.0	.5
Red Willow.....	298	.....	1.0	10.0	11.0	13.5	.5	3.0	.5
Culbertson.....	316	.....	.....	9.0	11.0	12.5	.5	3.0	.....
Trenton.....	326	.....	1.0	10.0	12.0	12.5	1.5	3.0	.5
Max.....	348	.....	.....	10.0	12.0	11.5	2.5	3.0	.5
Haigler.....	378	.....	.....	9.0	12.0	8.5	2.5	3.0	.5

It has been noted that our decision in the *Iowa-Nebraska Case* required certain reductions in rates to points on the line of the Atchison, Topeka & Santa Fe in Kansas and points north thereof. Upon petition for modification of our order we indicated that upon proper showing as to rate publication, we would permit restoration of the rates from certain points in western Iowa as they existed prior to the effective date of our order. *Iowa State Board of Railroad Commissioners v. A. E. Ry. Co.*, 34 I. C. C., 379.

The reductions to Nebraska points required by our order in the *Iowa-Nebraska Case* having been made effective on June 1, 1914, the carriers were met by the requirement to establish, on September 6, 1914, the Nebraska rates prescribed by general order No. 19. They were unwilling to make these intrastate rates applicable from the Missouri River cities in Iowa because they considered them too low, and they also state that the publication of these rates from Missouri River points would have reestablished in part the discrimination found to exist in the *Iowa-Nebraska Case*.

GENERAL RATE COMPARISONS.

The rate comparisons offered by the several complainants and defendants contain much duplication. Especially is this true of
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those comparisons between the present interstate rates under attack and the Iowa-Nebraska scale. In connection with our review of the evidence offered in support of the several complaints we have also set forth some comparisons made by the defendants. Other evidence of a more general character will be briefly stated.

It should be noted here that the percentage relations of the second and lower class rates to the first-class rate differ in the Iowa-Nebraska scale from those prescribed by the Nebraska commission in general order No. 19. These differences in percentage relationships, which explain in part the differences between the interstate and intrastate rates here involved, are shown in the following comparison:

	Per cent of first class.									
	1	2	3	4	5	A	B	C	D	E
Iowa-Nebraska scale.....	100	84	66½	50	40	45	35	30	25	20
Nebraska intrastate scale.....	100	85	70	60	45	50	35	30	25	17

The question of percentage relationships was considered at some length in our supplemental report in the *Iowa-Nebraska Case*, *supra*, and the relationships finally adopted embodied a modification of those originally proposed. The record contains considerable testimony, however, in approval of the relationships of classes established in the Nebraska intrastate scale. It is shown that the larger part of the less-than-carload shipments rated fourth class are rated fifth class in carloads, and the difference in the cost of transportation is stated to be such as to make proper a greater spread between the fourth-class and fifth-class rates than that fixed in the Iowa-Nebraska scale. An investigation made by the Nebraska commission showed that of the Nebraska intrastate carload traffic which moved under class rates 0.57 of 1 per cent was carried at fourth-class rates. The defendants contend that the fourth-class percentage relationship in the Iowa-Nebraska scale is too low, and with this the Sioux City complainant is in accord.

The Iowa-Nebraska scale names a rate of 13 cents and the Nebraska intrastate scale 14 cents, first class, for 5 miles. For greater distances the mileage rate of progression and the money rate of progression prescribed in each scale are as follows:

The Iowa-Nebraska scale for—

- 6 to 20 miles adds \$0.03 per 5 miles, stated for 5-mile groups.
- 21 to 40 miles adds .02 per 5 miles, stated for 5-mile groups.
- 41 to 100 miles adds .01 per 5 miles, stated for 5-mile groups.
- 101 to 200 miles adds .01 per 5 miles, stated for 10-mile groups.
- 201 to 800 miles adds .0075 per 5 miles, stated for 20-mile groups.

The Nebraska intrastate scale for—

6 to 200 miles adds \$0.01 per 5 miles, stated for 5-mile groups.
 201 to 400 miles adds .01 per 5 miles, stated for 10-mile groups.
 401 to 700 miles adds .005 per 5 miles, stated for 10-mile groups.

In support of their contention that the Nebraska intrastate rates are too low to be made the measure of reasonable interstate rates from the Missouri River cities to Nebraska points defendants have compared for stated distances the percentages that the sum of the rates for each class and for all classes in the Iowa-Nebraska scale bear to the rates for each class and to the total of all classes in the Nebraska scale. This comparison is as follows:

Percentage relation of aggregate rates for each class and for all classes under the Iowa-Nebraska scale for stated distances to the aggregate rates for each class and for all classes under the Nebraska intrastate scale.

Miles.	1	2	3	4	5	A	B	C	D	E	All classes.
5-50.....	130.2	128.2	125.8	109.9	114.9	118.9	144.6	131.5	133.3	152.3	126.6
51-100.....	131.5	129.8	125.8	111.0	116.7	118.5	132.0	132.1	132.8	154.6	126.4
101-150.....	124.6	122.7	117.2	103.8	110.8	113.2	124.4	124.6	126.4	146.5	119.4
151-200.....	119.5	117.8	113.1	100.0	106.1	107.2	120.0	119.5	121.8	140.6	114.5
201-300.....	107.8	109.8	104.9	95.8	98.4	98.7	111.3	110.4	111.2	130.5	105.6
301-500.....	102.4	101.2	97.0	85.8	91.1	91.8	101.7	102.6	102.9	120.4	98.1
501-700.....	108.3	107.0	102.7	90.6	96.2	97.0	109.0	108.4	108.7	127.3	103.8

Although the fourth-class rates are 60 per cent of first class under the Nebraska intrastate scale and 50 per cent of first class under the Iowa-Nebraska scale, the Nebraska scale fourth-class rates are lower for distances up to 155 miles. The greater part of the Nebraska intrastate merchandise tonnage in less than carloads moves for distances of 150 miles or less, and more than 75 per cent of that tonnage moves for distances of 200 miles or less. There was filed in evidence a statement of all less-than-carload merchandise shipped during the year ended June 30, 1914, from the principal jobbing points in Nebraska on the line of the Burlington, namely, Omaha, Lincoln, Beatrice, Hastings, and Grand Island, to Burlington stations within that state compiled for 25-mile groups from 1 to 200 miles and for 50-mile groups, from 200 to 500 miles. There were 243,127,661 pounds transported. Of this 44.4 per cent moved distances from 1 to 100 miles, 64.9 per cent from 1 to 150 miles, 78.4 per cent from 1 to 200 miles, 92.6 per cent from 1 to 300 miles, while but 7.4 per cent moved distances of 301 miles or more.

The fourth-class rates of the Nebraska scale, as stated, are lower than the fourth-class rates of the Iowa-Nebraska scale for distances of 155 miles or less, and where the Nebraska commission has used its scale in making rates the lower fourth-class rates are in effect. For 160 miles the fourth-class rates are the same under both scales; for greater distances the fourth-class rates of the Nebraska scale are higher. But in the making of rates from Omaha the

Nebraska commission, as already shown, has applied the rates of the Iowa-Nebraska scale as maxima. Thus the fourth-class rate from Omaha to Crawford, 473 miles, is 52 cents, although the fourth-class rate which would result from application of the Nebraska scale for that distance is 60.6 cents.

Of the total intrastate tonnage which was carried by the Burlington in Nebraska under rates for the first four classes, during the period September 6, 1914, to November 30, 1914, inclusive, 21 per cent moved at first-class rates, 9.5 per cent at second-class rates, 26 per cent at third-class rates, and 43.5 per cent at fourth-class rates.

The average direct terminal costs per 100 pounds of handling less-than-carload shipments under the first four classes at the Lincoln station of the Burlington and at nonjobbing stations throughout the state were found upon investigation by the Nebraska commission to be 6 cents at Lincoln and 4.92 cents at the other stations, or in the aggregate 10.92 cents per 100 pounds. These costs included all expense between the time the car arrived in the receiving yard on inbound freight and the delivery of the car in the departing yard on outbound freight. Thus in making this computation only direct station expenses were included, no consideration being given to general expenses, taxes, depreciation, or return upon property. No investigation was made of terminal costs at jobbing stations except Lincoln, and other than this study of terminal expense the Nebraska commission made no separation as between terminal costs and haulage costs.

Approximately 75 per cent of the population of Nebraska is located east of a line drawn north and south through Columbus, a point 82 miles west of Omaha via the Union Pacific, which is the short line. An analysis made by the Nebraska commission of waybills covering intrastate shipments of less-than-carload merchandise for a period of four months showed that the average haul per ton-mile under first-class rates by the Burlington was 105 miles, under second class 90 miles, under third class 99 miles, under fourth class 88 miles. Using this as a basis defendants make the following comparison between rates prescribed in the *Iowa-Nebraska Case* and under the Nebraska distance tariff:

Classes.	Average haul.	Rates under Nebraska scale.	Rates under Iowa-Nebraska scale.
	Miles.		
1.....	105	34.0	44.0
2.....	90	26.4	34.0
3.....	99	23.1	28.0
4.....	88	18.6	20.0
Average rate.....	.....	25.5	31.5

The average rate under the Iowa-Nebraska scale is 23.5 per cent greater than under the Nebraska scale.

The average intrastate haul per ton-mile of less-than-carload merchandise by the Burlington, Union Pacific, and North Western combined, for each class, found by the Nebraska commission from a similar analysis of waybills, is shown in the following table, together with the same comparison of rates:

Classes.	Average haul.	Rates under Nebraska scale.	Rates under Iowa-Nebraska scale.
	Miles.		
1.....	116	37.0	46.0
2.....	106	28.9	37.0
3.....	106	24.5	29.0
4.....	101	20.4	22.0
Average rate.....		27.7	33.5

The average rate under the Iowa-Nebraska scale is 20.9 per cent greater than under the Nebraska scale.

A similar analysis of carload traffic covering a period of two months on the Burlington and Union Pacific and one month on the North Western showed an average haul of Nebraska intrastate carload class traffic as follows: Fifth class, 151 miles; A, 151 miles; B, 113 miles; C, 112 miles; D, 80 miles; E, 173 miles. A comparison of rates for these hauls under the same scales is shown in the following table:

Classes.	Average haul.	Rates under Nebraska scale.	Rates under Iowa-Nebraska scale.
	Miles.		
5.....	151	19.8	22.0
A.....	151	22.0	24.0
B.....	113	12.6	16.0
C.....	112	10.8	14.0
D.....	80	7.3	10.0
E.....	173	8.2	12.0
Average rate.....		13.65	16.33

The average rate under the Iowa-Nebraska scale is 19.6 per cent higher than under the Nebraska scale.

Defendants have also compared the present rates from Sioux City which are under attack with the Twin Cities-Dakota scale. In making this comparison, rates to all Burlington stations in Nebraska have been averaged with respect to certain distances. Rates for distances less than 200 miles were not involved in *Minneapolis Civic & Commerce Asso. v. C., M. & St. P. Ry. Co., supra*, and in consequence class rates were not prescribed for such distances. The rates pre-

scribed as maxima in that case were made by grading upward according to distance the rates which had been established by defendant to points near the Minnesota-Dakota line less than 200 miles distant from Minneapolis. This comparison for the first five classes is shown in part in the following table:

	Miles.	1	2	3	4	5
Sioux City-Nebraska.....	201-220	55.87	46.85	37.63	29.36	24.95
Twin Cities-Dakota.....		57.0	48.0	38.0	29.0	23.0
Sioux City-Nebraska.....	241-260	60.87	54.25	45.41	36.54	29.97
Twin Cities-Dakota.....		66.0	56.0	44.0	34.0	27.0
Sioux City-Nebraska.....	301-320	77.22	69.0	56.0	43.0	34.5
Twin Cities-Dakota.....		80.0	67.0	53.0	40.0	32.0
Sioux City-Nebraska.....	341-360	83.9	74.6	60.4	46.4	36.9
Twin Cities-Dakota.....		89.0	75.0	59.0	45.0	36.0
Sioux City-Nebraska.....	401-420	89.42	81.0	66.28	51.14	40.64
Twin Cities-Dakota.....		102.0	85.0	68.0	51.0	41.0
Sioux City-Nebraska.....	501-520	107.2	96.0	76.5	58.5	46.25
Twin Cities-Dakota.....		123.0	103.0	82.0	62.0	49.0

In connection with the comparison made of interstate rates here attacked with those made effective under the Commission's decision from the twin cities to points in South Dakota and North Dakota defendants show that the average traffic density of all lines in Nebraska for 1914 was 576,005 tons 1 mile per mile of road, while the average density of the Great Northern, Northern Pacific, and Chicago, Milwaukee & St. Paul in Minnesota, North Dakota, and South Dakota combined for that year was 840,778 tons 1 mile per mile of road, or 145.9 per cent of the density in Nebraska. If, however, we are to compare rates in Nebraska with rates in South Dakota, a fairer comparison of density of traffic would be as between Nebraska and South Dakota.

In behalf of the North Western comparisons were made between the rates from Omaha to stations in Nebraska under general order No. 19 and the intrastate distance rates which apply east of the Missouri River in the state of South Dakota approved by the board of railroad commissioners of that state. The South Dakota distance tariff rates which apply east of the Missouri River are lower than those which apply west of the river. It is unnecessary to set forth at length and with reference to specific points the results of this comparison. In general, it shows that the Nebraska rates are lower than the South Dakota rates. This is particularly true of the first three classes. On fourth class the Nebraska rates are frequently higher, due to the fact that fourth class in the South Dakota scale is 50 per cent of first class, while in the Nebraska scale, as has been shown, it is 60 per cent.

The intrastate rates made effective under general order No. 19 are compared by defendants with the lower of two scales of class rates adopted by the railroad and warehouse commission of Missouri for intrastate transportation between points in that state. Summarized, this comparison shows that the Missouri class rates in average for distances up to 50 miles are 119.3 per cent of the Nebraska rates; for distances 50 to 100 miles, 117.2 per cent; and for all distances to 300 miles, 103.5 per cent of those rates. For the year ended June 30, 1914, the density of tonnage hauled by the Burlington in the state of Missouri was 1,102,344 tons 1 mile per mile of road, in Iowa 645,895 tons, as compared with 496,569 tons in Nebraska.

Defendants have compared the rates fixed by this Commission for application from Oklahoma to Texas in *Corporation Commission of Oklahoma v. A. & S. Ry. Co.*, 26 I. C. C., 520, with the Nebraska intrastate scale. A summary of this comparison is found in the following table, which shows the percentage relation for stated distances which the Nebraska rates bear to those prescribed by the Commission. Rates are shown for distances up to 450 miles, the maximum distance for which the interstate rates were fixed:

Percentage relation which the Nebraska intrastate scale rates bear to the Oklahoma-Texas scale rates for distance groups.

Miles.	1	2	3	4	5	A	B	C	D	E
1-25.....	105.2	100.0	94.9	97.9	94.7	93.0	80.0	85.7	74.0	62.2
26-50.....	89.7	86.8	75.7	72.4	62.3	64.8	53.4	57.2	55.5	49.4
51-75.....	82.2	76.2	68.4	63.4	59.1	62.5	50.6	52.0	51.7	45.3
76-100.....	77.5	72.0	66.5	64.5	57.7	61.5	49.9	48.9	52.0	43.8
101-150.....	74.7	70.6	66.5	62.9	58.6	62.9	49.6	47.9	51.5	41.5
151-260.....	76.5	72.6	68.3	69.0	62.2	67.0	52.6	53.7	50.4	51.4
261-360.....	83.3	81.2	78.0	78.9	74.5	80.9	61.8	63.8	68.4	57.7
361-450.....	92.8	90.7	89.1	88.1	84.3	88.4	69.7	72.5	75.7	60.2

Defendants contend that, despite allowance for the lower density of tonnage shipped under class rates between points in Texas and points in Oklahoma as compared with the density of tonnage in Nebraska, the wide differences in these rate structures show that the Nebraska rates are too low for application to interstate shipments from the Missouri River.

Defendants further urge that the Nebraska rates should not be made applicable to interstate transportation from the Missouri River cities in view of the rates and rate relationships prescribed by the Nebraska commission to effect an equalization as between competing cities. They insist that the comparisons of interstate rates with the Nebraska scale fail to reveal the true level of the intrastate rates prescribed by general order No. 19 because of the many specific rates embodied in that order which are departures from the distance scale. Upon these rates from Nebraska jobbing centers, which, as thus equalized, embody wide departures from the distance tariff, is

shipped approximately 82 per cent of the tonnage which moves under Nebraska intrastate class rates. To show the extent to which specific rates named by the Nebraska commission from Omaha are lower than would be made by the scale fixed by that commission and to compare these specific rates from Omaha with the interstate rates to Nebraska points from St. Joseph, defendants have averaged the rates from Omaha and from St. Joseph to all stations on all lines in Nebraska which fall within successive 10-mile groups in distances ranging from 51 to 500 miles. The first group is for distances from 51 to 60 miles and the rates from Omaha and from St. Joseph to each station in Nebraska located within those distances were taken and the average rate thus ascertained. This evidence, with some groups omitted, is shown in the following table:

	Miles.	1	2	3	4
Omaha.....	51- 60	23.5	20.0	16.4	14.1
Nebraska intrastate scale.....		24.5	20.8	17.1	14.7
St. Joseph.....					
Omaha.....	71- 80	28.0	23.8	19.6	16.8
Nebraska intrastate scale.....		28.5	24.2	20.0	17.1
St. Joseph.....		40.0	30.0	25.0	20.0
Omaha.....	91-100	31.0	26.4	21.7	18.6
Nebraska intrastate scale.....		32.5	27.6	22.8	19.5
St. Joseph.....		39.8	32.6	25.0	21.4
Omaha.....	111-120	35.0	29.8	24.5	21.0
Nebraska intrastate scale.....		36.5	31.0	25.6	21.9
St. Joseph.....		40.0	35.0	26.5	22.8
Omaha.....	131-140	38.0	32.3	26.6	22.8
Nebraska intrastate scale.....		40.5	34.4	28.3	24.3
St. Joseph.....		41.3	36.3	29.5	23.0
Omaha.....	151-160	42.0	35.7	29.4	25.2
Nebraska intrastate scale.....		44.5	37.8	31.1	26.7
St. Joseph.....		42.1	37.1	29.6	24.0
Omaha.....	171-180	47.5	40.3	33.2	28.5
Nebraska intrastate scale.....		48.5	41.2	33.9	29.1
St. Joseph.....		47.6	42.0	35.3	26.4
Omaha.....	191-200	52.0	44.2	36.4	31.2
Nebraska intrastate scale.....		52.5	44.6	36.7	31.5
St. Joseph.....		49.8	44.2	37.4	29.2
Omaha.....	241-250	60.7	51.7	42.6	35.3
Nebraska intrastate scale.....		63.0	53.6	44.1	37.8
St. Joseph.....		54.4	49.1	43.8	35.9
Omaha.....	291-300	73.0	62.1	51.1	41.1
Nebraska intrastate scale.....		73.0	62.1	51.1	43.8
St. Joseph.....		68.6	62.2	57.0	47.8
Omaha.....	341-350	83.0	70.6	57.4	44.5
Nebraska intrastate scale.....		83.0	70.6	58.1	49.8
St. Joseph.....		77.2	70.8	65.0	54.2
Omaha.....	391-400	93.0	79.1	62.8	48.8
Nebraska intrastate scale.....		93.0	79.1	65.1	55.8
St. Joseph.....		83.6	78.3	70.4	59.9
Omaha.....	441-450	97.1	82.6	67.4	52.3
Nebraska intrastate scale.....		98.0	83.3	68.6	58.8
St. Joseph.....		94.5	86.5	81.5	68.0
Omaha.....	491-500	101.4	86.1	70.2	54.3
Nebraska intrastate scale.....		103.0	87.6	72.1	61.8
St. Joseph.....		103.0	95.0	87.0	75.0

It appears from this table that the specific rates prescribed from Omaha by the Nebraska commission are substantially lower than would result from the uniform application of the Nebraska scale. It further appears that the average rates from Omaha are lower on the first four classes than the average present interstate rates from St. Joseph for distances to and including 140 miles, on the first three classes to and including 180 miles, on third class to and including 500 miles, and on fourth class for the groups 241-500 miles.

A similar comparison intended to show the extent of the departures from the Nebraska distance tariff in favor of interior Nebraska jobbing centers has been made with reference to rates from Fremont which are compared with the Nebraska distance tariff and the present interstate rates from St. Joseph. This is shown in the following table which has been made by taking rates to each station on the line of the Burlington which falls within the stated distances:

	Miles.	1	2	3	4
Fremont.....	61-100	28.3	24.0	19.9	17.0
Nebraska intrastate scale		29.5	25.0	20.6	17.7
St. Joseph.....		37.3	29.6	24.0	20.1
Fremont.....	101-200	39.6	33.1	27.3	23.1
Nebraska intrastate scale		43.5	36.9	30.4	26.1
St. Joseph.....		43.9	38.8	31.1	24.7
Fremont.....	201-300	59.2	49.6	40.9	32.6
Nebraska intrastate scale		64.0	54.4	44.8	38.4
St. Joseph.....		57.5	52.1	45.7	38.0
Fremont.....	301-400	79.3	66.6	53.8	39.9
Nebraska intrastate scale		84.0	71.4	58.8	50.4
St. Joseph.....		78.5	71.8	65.7	54.9
Fremont.....	401-500	92.3	77.7	63.0	47.4
Nebraska intrastate scale		98.5	83.7	68.9	59.1
St. Joseph.....		94.8	87.2	80.5	68.7

It appears from this table that in average the rates established by the Nebraska commission from Fremont are substantially lower than would be made by the application of its distance tariff and are also substantially lower than the present interstate rates from St. Joseph. The basis of the equalization in rates from Fremont under general order No. 19 has been described.

EFFECT ON DEFENDANTS' REVENUES OF APPLYING THE NEBRASKA SCALE
TO INTERSTATE TRANSPORTATION.

The application of the Nebraska scale to interstate transportation would result in substantial reductions in the revenues of the carriers. In behalf of the Burlington there was offered in evidence a statement of the total intrastate traffic transported under class rates by that carrier during the period September 6 to November 30, 1914, inclusive. The purpose of this statement is to show the effect on the revenues of the Burlington of the reduced rates prescribed by general

order No. 19. The tonnage is detailed for each class and amounts in the aggregate to 132,886,679 pounds, of which 72,145,836 pounds, or more than one-half, moved under the rates for the first four classes. These are the principal less-than-carload classes in western classification territory. Under the present Nebraska rates, this traffic taking class rates yielded \$268,427.95, while under the schedules in effect prior to September 6, 1914, the earnings would have been \$337,987.57. This shows reduced earnings on traffic moving under class rates, for the stated period, of \$69,559.62, or 20.6 per cent. Based upon the reductions thus shown it was estimated that the annual revenues of the Burlington on intrastate traffic exclusively would be reduced by approximately \$300,000. It was estimated by the Nebraska commission that the reduction in the annual revenues of the North Western as a result of the lower class rates made effective by general order No. 19 would be approximately \$100,000.

Receipts were shown of less-than-carload merchandise delivered in interstate and intrastate transportation by the Burlington to all Nebraska stations except Lincoln during the year ended June 30, 1914, from the principal points of origin. The aggregate total is 588,836,470 pounds. The tonnage in pounds from some of the principal interstate points of origin was as follows: Chicago, 69,350,748; Kansas City, 30,517,581; St. Louis, 26,587,663; St. Joseph, 20,396,089; Sioux City, 13,756,984; Council Bluffs, 11,936,933; Denver, 9,572,271; Atchison, 6,435,842. With the exception of the so-called differential territory which centers at Lincoln, Fremont, and Beatrice, and certain territory in the western part of the state where the rates to Colorado common points are applied as maxima, the rates from Chicago to Nebraska are made on the Missouri River combination. It therefore appears that if the rates fixed in general order No. 19 were made effective for interstate transportation from Council Bluffs and the other complaining cities, the rates from Chicago and the Mississippi River would be automatically reduced to a large territory in Nebraska. From Chicago, Peoria, and Mississippi River points 103,350,940 pounds of less-than-carload merchandise were delivered by the Burlington to stations in Nebraska during the year ended June 30, 1914, while the aggregate shipments from Sioux City, St. Joseph, Kansas City, Atchison, Council Bluffs, and Denver amounted to 92,615,700 pounds. It was estimated that if the application of these rates should be extended to interstate transportation, the aggregate reduction of Burlington annual revenues would be approximately \$600,000. The total reduction in revenues of all railroads serving Nebraska which would result from the application of the Nebraska rates to interstate as well as intrastate transportation was estimated to be from \$1,200,000 to \$1,400,000 annually.

TESTIMONY OFFERED BY THE NEBRASKA COMMISSION AND DEFENDANTS
AS TO INTRASTATE EARNINGS.

Testimony was offered at length by the Nebraska commission with regard to the rates named in general order No. 19. It is shown without contradiction that that order was made after an exhaustive investigation during which hearings were held and evidence was submitted by defendants as well as by other parties interested in the issues there involved. Certain exhibits made a part of this record by the state commission and by the defendants consist of transcripts of testimony and exhibits from a court proceeding the origin and purpose of which we shall briefly outline. In 1907 the Nebraska legislature enacted certain statutes making it unlawful for the carriers to charge fares for intrastate transportation of passengers exceeding 2 cents per mile, and for intrastate transportation of certain commodities, namely, live stock, potatoes, grain, grain products, fruit, coal, lumber, or building materials, in carloads, rates exceeding 85 per cent of those in effect on January 1, 1907, until higher rates on any of such commodities should be approved by the Nebraska commission. Thereupon the state, by its attorney general, filed bills in equity in the state court against the Rock Island, Burlington, Union Pacific, and North Western praying for an injunction restraining those carriers from collecting higher rates than those required by the statute referred to. These actions were removed to the circuit court of the United States for the district of Nebraska, where the defendants filed cross bills attacking the validity of the state statutes upon the ground that the passenger fares and commodity rates as reduced were confiscatory. Evidence was offered by the Rock Island and by the state commission in the action against that carrier. This action, however, was discontinued by stipulation and no decree was rendered, from which the state commission infers a conclusion upon the part of the carriers that the right to a restraining order had not been established. The reduced passenger fares and commodity rates there involved are now in effect. Much of the evidence offered by the Rock Island and the state commission in that case was filed in this record in the form of exhibits. In addition that commission and the defendants have offered other evidence relating to the earnings of the carriers upon intrastate traffic.

From the evidence thus briefly outlined we are asked by the Nebraska commission to find that in 1909 the Rock Island earned a return on intrastate freight traffic of 11.29 per cent on a valuation based upon the value of the property as fixed by the state board of equalization and assessment for 1908, while under differing assignments to intrastate transportation the Rock Island asks us to find that in that year the operating expenses, taxes, and rentals were

more than 99 per cent of the freight revenues. Evidence was submitted intended to show that in 1914 the Rock Island from all of its Nebraska intrastate traffic earned but 0.18 of 1 per cent upon the "present value" of the property in 1911 as determined by the state authorities; that the North Western in 1912 earned a return upon Nebraska intrastate traffic of 4.29 per cent and in 1913, 4.30 per cent upon the cost of reproduction new in 1911 as fixed by the state plus additions and betterments; that upon a similar valuation of the Omaha that line in 1912 earned 4.16 per cent; in 1913, 3.41 per cent; in 1914, 2.93 per cent; that the Missouri Pacific and Grand Island have been operating at a loss. Evidence of this character was not submitted in behalf of the Union Pacific or the Burlington. In connection with the carriers' estimate that the application of the Nebraska rates to interstate as well as intrastate transportation would cause a reduction in revenues of from \$1,200,000 to \$1,400,000, it may be stated that the total freight revenue from both interstate and intrastate transportation assigned to Nebraska by all of the defendants for the year 1914 was \$36,551,798. Based upon the lower of the foregoing estimates, the aggregate reduction in freight revenues would amount to 3.28 per cent. The percentage of reduction in net returns would be substantially greater.

The Commission will not undertake to pass upon the merits of the issues involved in the case referred to, which was brought by the state of Nebraska, nor will it draw any inferences from the fact that that case was discontinued prior to entry of decree. While we may consider as a measure of interstate rates the rates prescribed by general order No. 19, it is clear that we have no authority to determine whether such rates yield the carriers a fair return upon the property devoted to intrastate traffic. This is a question for the courts in a proper proceeding and involves revenues derived from commodity rates and passenger fares which are not here in issue. The limit of our jurisdiction in this case is to require the defendants to maintain reasonable maximum class rates and reasonable classification ratings for interstate transportation between the complaining cities and points in Nebraska, and to require the removal of any unjust discriminations which may be found to exist. Although it was apparent that the rates prescribed by the Nebraska commission to take effect from Omaha were materially lower than the Iowa-Nebraska scale and would cause unjust discrimination unless extended voluntarily by the defendants to Council Bluffs and Sioux City, that commission expressly disclaims any intention to create an adjustment of rates which would be unduly favorable to Nebraska cities and correspondingly prejudicial to competing cities outside of the state. We are informed by the evidence and argument that in prescribing the class rate structure embraced in general

order No. 19 the state commission was guided solely by a purpose to prescribe reasonable and nonconfiscatory rates for intrastate transportation and it is urged that under the decision of the Supreme Court in *Smyth v. Ames*, 169 U. S., 466, the relationship with interstate rates could not lawfully be considered. It is obvious, however, that in equalizing rates in some instances from Omaha with those in effect from Sioux City and more particularly in prescribing the formerly effective equalization of rates from Lincoln and other interior points, the state commission, although following in large measure the previous practice of the carriers, fixed those rates with reference to the inbound interstate rate adjustments.

The Nebraska commission does not question the duty of this Commission to direct the removal of unjust discriminations caused by differences between interstate and intrastate rates. It recognizes our authority under the decision of the Supreme Court in *Houston & Texas Ry. v. United States*, 234 U. S., 342, to direct the removal of such discriminations although state rates are increased thereby. It insists, however, that this authority may not be exercised unless the Commission finds, and is justified by the evidence in finding, that the intrastate rates are confiscatory. This position involves the assumption that a state-made rate or system of rates can not be said to cause unjust discrimination unless it is unlawful for another reason, namely, that it is so low as to deprive the carriers of their property without due process of law or to deny them the equal protection of the laws. Such an assumption finds no support in those sections of the act which define unjust discrimination and undue prejudice, nor can it be justified in practice or on principle. This Commission is frequently called upon to determine whether a relation of rates is unjustly discriminatory where no question is or can be raised as to whether any of the rates involved are confiscatory. The act gives it no authority to determine whether state-made rates are confiscatory. The position is wholly indefensible that this Commission must inquire into an issue as to which it has no jurisdiction for the purpose of determining a question as to which its jurisdiction is not only complete, but exclusive.

The evidence offered by the Nebraska commission has been carefully examined and full weight has been accorded the results of its investigations as expressed in general order No. 19. The record convinces us of the earnest endeavor of that commission to deal with the complex problem of rate making with justice to all parties before it. It is our conclusion, however, upon the facts here disclosed, that the intrastate rates prescribed in that order are too low for application as reasonable maximum interstate rates between the Missouri River cities and points in Nebraska, and therefore too low to form the measure by which the unjust discrimination found to exist should

be removed. This conclusion is fully sustained by the many rate comparisons and other related evidence, some of which has been reviewed in the foregoing paragraphs, and by the material reductions in the defendants' revenues which would be consequent upon the application of the intrastate rates to interstate transportation.

Further reference to the voluminous evidence of record would serve no useful purpose. It is of interest, however, to notice the results of applying facts found by the Nebraska commission to certain traffic statistics which are uncontradicted. It was found by the Nebraska commission, as has been stated, that the average direct station terminal costs of handling intrastate less-than-carload shipments under the rates for the first four classes at the Lincoln station of the Burlington, and at other Nebraska stations on shipments from Lincoln, were 10.92 cents per 100 pounds. These direct costs include no allowances for general expenses, taxes, depreciation, or return upon property. The average revenue per 100 pounds which is at least a minimum requirement to provide for such items may be approximately determined for present purposes by dividing 10.92 cents by 0.68, the average operating ratio of the Burlington for the years 1910 to 1915, inclusive. The quotient is approximately 16 cents. It was shown by the Burlington that of the tonnage carried intrastate in Nebraska under the first four class ratings for the period September 6, 1914, to November 30, 1914, 21 per cent moved at first-class rates, 9.5 per cent at second-class rates, 26 per cent at third-class rates, and 43.5 per cent at fourth-class rates. The percentage relationship for the first four classes adopted by the Nebraska commission, as stated, is 100, 85, 70, 60, respectively.

By the use of the foregoing figures it is possible to determine the base or first-class rate and the rates for the second, third, and fourth classes, which for the proportionate traffic movement under those classes will produce an average revenue of 16 cents per 100 pounds. Thus, if the first-class rate is 22 cents, under the percentage relationship above stated, the second-class rate will be 18.7 cents; third-class, 15.4 cents; fourth-class, 13.2 cents. Twenty-one per cent of the traffic at a rate of 22 cents yields 4.6 cents; 9.5 per cent at a rate of 18.7 cents yields 1.7 cents; 26 per cent at a rate of 15.4 cents yields 4 cents; 43.5 per cent at a rate of 13.2 cents yields 5.7 cents. The aggregate yield is 16 cents.

We may, therefore, take 22 cents as a base rate, for purposes of this comparison, which, under the percentage determination of rates for the second, third, and fourth classes, will make a not excessive allowance for direct station expenses of handling less-than-carload shipments in this territory, and for general expenses, taxes, depreciation, and return upon property. To this rate must be added a

charge for the cost of haul. By using, in connection with the base rate of 22 cents, the haulage charges adopted by the Nebraska commission in its distance tariff, except that 1 cent is added for the first 5 miles, we derive rates for the first class, which it is of interest to compare with the first-class rates under the Iowa-Nebraska scale. The former are shown in the following table for representative distances under the designation "compared rates:"

Miles.	First-class compared rates.	First-class rates under Iowa-Nebraska scale.	Miles.	First-class compared rates.	First-class rates under Iowa-Nebraska scale.	Miles.	First-class compared rates.	First-class rates under Iowa-Nebraska scale.
10	24	16	110	44	44	220	66	65
20	26	22	120	46	46	240	70	68
30	28	26	130	48	48	260	74	71
40	30	30	140	50	50	280	78	74
50	32	32	150	52	52	300	82	77
60	34	34	160	54	54	340	90	83
70	36	36	170	56	56	400	102	92
80	38	38	180	58	58	500	112	107
90	40	40	190	60	60	600	122	122
100	42	42	200	62	62	700	132	137

It appears that under both the Nebraska distance tariff and the Iowa-Nebraska scale the base rates are too low to cover direct terminal costs, general expenses, taxes, depreciation, and return upon property. Under the Iowa-Nebraska scale this is compensated for in the increased money rate of progression for the first 40 miles. The carriers urge that rates which reflect full terminal costs can not be maintained for the very short distances because of competition with the team dray and auto truck. Terminal services, however, are rendered irrespective of the length of haul. The rates prescribed by this Commission are maximum rates and may be reduced to meet competition. It may be said that the direct station costs of handling less-than-carload shipments are substantially greater than those of handling carloads. This shows the difficulty of constructing reasonable rates for less-than-carload and carload shipments in the same scale, but where the facts are sufficiently developed the rate for the carload classes can be fairly adjusted through the percentage relationships to the first-class rates. In any event, however, the carriers are entitled to an adequate return for their services on less than-carload traffic and in this case the interest of the shippers represented is largely centered in the rates for the first four classes.

The close relation of rates developed from cost and traffic statistics of record in these cases with interstate rates under the Iowa-Nebraska scale affords cumulative evidence that with certain modifications the latter rates would be reasonable for application between the complaining cities and points in Nebraska.

CONCLUSIONS.

With reference to what we have called the Sioux City-Lincoln controversy, which relates to differential adjustments from Lincoln, Fremont, and Beatrice, to which points the inbound rates are adjusted differentially over Omaha, and to the equalizations described from other Nebraska jobbing points existing prior to September 6, 1914, we shall express no opinion and make no finding in these cases. These adjustments of outbound rates are not of recent origin, and the issues as made by complainants are based primarily upon the relationships as changed by the reduced intrastate rates effective September 6, 1914. If it shall appear in the future that this controversy has survived the rate readjustments which are an inevitable outcome of these cases, that complaint may be made the subject of a separate proceeding.

For the purposes of these cases we regard as sound the contention of Sioux City that rates between that point and stations on the North Western should be made by application of the single-line scale, for the Omaha and the North Western, although separately operated, are under the same management and control. See *Commercial Club of Superior, Wis., v. G. N. Ry. Co.*, 24 I. C. C., 96, 111, 120. The contention that the single-line scale should be applied over the Omaha and Union Pacific is not well founded.

As stated, the Iowa-Nebraska scale rates applicable from the first stations in Iowa east of the upper Missouri River cities apply as maxima from the latter points to Nebraska destinations. It is our conclusion that the maximum class rates between all of the Missouri River cities and points in Nebraska should be based upon actual distances and that the first-class rate should not be higher than under the Iowa-Nebraska scale, except for distances less than 40 miles. We further conclude that the rates for the lower classes should be based upon the percentage relationship of classes prescribed by the Nebraska commission. A scale of reasonable maximum class rates for application between the complaining cities and points in Nebraska is hereinafter set forth, and it is our conclusion that the rates here attacked are unreasonable in so far as they exceed those named in that scale.

This scale is constructed, in substance, upon the first-class rates of the Iowa-Nebraska scale, in connection with the percentage relation of classes which was adopted by the Nebraska commission. The first-class rates for distances 40 to 700 miles are the same as under the Iowa-Nebraska scale, while for distances of less than 40 miles the first-class rates under that scale have been here readjusted by increasing the base rate and reducing the money rate of progression. The base rate of the Iowa-Nebraska scale is 13 cents, to which is added 3

cents per 5 miles for distances 6 to 20 miles and 2 cents per 5 miles for distances 21 to 40 miles, making a rate of 30 cents for 40 miles. The base rate of the scale here found reasonable is 22 cents, to which is added 1 cent per 5 miles for all distances to 40 miles, making also a rate of 30 cents for 40 miles. While the result of this readjustment is to make some increases for the shorter distances over the rates of the Iowa-Nebraska scale, it is believed that the increased base rate more nearly reflects the actual terminal costs than does the base rate of that scale.

The money rate of progression is 1 cent per 5 miles for 100 miles, stated for 5-mile groups; 1 cent per 5 miles for distances 101-200 miles, stated for 10-mile groups; 0.75 of 1 cent per 5 miles for distances 201-700 miles, stated for 20-mile groups. This is substantially the same as the money rate of progression adopted by the Nebraska commission which, as shown above, is 1 cent per 5 miles for distances 6 to 200 miles, stated for 5-mile groups; 1 cent per 5 miles for distances 201 to 400 miles, stated for 10-mile groups; 0.5 of 1 cent per 5 miles for distances 401-700 miles, stated for 10-mile groups.

The percentage relationship of classes adopted by the Nebraska commission, which has met with unqualified approval upon this record, is higher on certain classes than that prescribed in the Iowa-Nebraska scale. The principal change is in the fourth-class rate, which is increased from 50 per cent of first class to 60 per cent of first class, while fifth class is increased from 40 per cent of first class to 45 per cent of first class. The result is a spread of 15 per cent of first class between fourth class, under which the movement is largely less than carloads, and fifth class, under which the tonnage is in carloads. The corresponding spread of the Iowa-Nebraska scale is 10 per cent. Class A is increased from 45 per cent of first class to 50 per cent of first class, while class E is reduced from 20 per cent of first class to 17 per cent of first class. The other changes, which appear in a foregoing paragraph, do not require restatement.

The facts show that the relation of rates between the Missouri River cities and points in Nebraska, on the one hand, and between Omaha and other Nebraska cities and points in Nebraska, on the other, subjects all of the complaining cities to undue prejudice and disadvantage and gives an undue preference to Omaha and other Nebraska cities. As to Council Bluffs and Sioux City, this conclusion is generally conceded. As to the lower Missouri River cities, the allegation of unjust discrimination is opposed by the Nebraska commission and by Omaha, although not by Lincoln, upon the ground that the rates between those cities and Nebraska points are for the most part lower per mile than the rates from Omaha. This is a rate comparison measured by distance alone, and under

the facts of these cases can not be controlling in determining the issue of unjust discrimination against the lower Missouri River cities. The reasons for this are obvious. We have repeatedly held that the Commission has no power to require carriers to remove the disabilities of geographical location by rate equalizations. On the other hand, we have recognized their right to create and to meet competitive conditions which could not be required under the act; a right which is subject to the limitation, however, that unjust discrimination shall not be caused thereby. If in a given adjustment, such as is here involved, carriers do not make distance the controlling measure of their rates, but adopt a policy of rate equalization in which distance is in part disregarded, then it is clear that they can not accord the advantages of such rates to certain points of origin and deny them to other competing points from which shipments are made under substantially similar circumstances and conditions.

The position of Omaha in these cases, when analyzed, expresses disapproval of distance as the controlling factor in determining the relation of its outbound rates to those from Sioux City and from the more important interior Nebraska cities. As to its relation with these points, Omaha approves the policy of rate equalization in one form or another. Likewise the Nebraska commission, as urged by shippers and carriers, abandoned a tentative plan for a distance tariff and required the carriers to make large equalizations in rates from Nebraska jobbing points. This the carriers have done in making effective the provisions of general order No. 19. Under these circumstances it is obviously illogical to ask that the issue of unjust discrimination in rates from the lower Missouri River cities, as compared with the rates from the Nebraska cities, be determined by the sole standard of distance. So long as their competitors in the state of Nebraska are accorded equalized rates the carriers can not lawfully deny to the lower Missouri River cities whatever rate advantages would accrue from rate schedules made upon the same principle. In the last analysis the test of unjust discrimination as between rates from two competing points is to be found in an examination of the rates applicable from those points rather than in the differing principles by which those rates may be made. Where, however, it is apparent that to withhold arbitrarily from one of two points similarly situated the principle of rate making which is accorded to the other results in a less favorable adjustment than would otherwise be accorded, the failure to apply the same principle to both is unjustly discriminatory.

In reaching the conclusion that unjust discrimination has been shown against the lower Missouri River cities we have not been

influenced by their contention that the distances from the Mississippi River to the Missouri River should be considered in connection with the distances from the Missouri River to Nebraska points. The uniform rate structure between the rivers is an adjustment which is justified by conditions as they there exist and which are not present in the territory here involved. Whatever disadvantages may result from that adjustment, it is clear that they can not properly be used as a basis for securing compensating advantages in a different territory.

It is apparent that there are many inconsistencies in the present relation of class rates as between Omaha and the lower Missouri River cities to destinations both in Nebraska and Kansas. Some of these have been pointed out in this report. The principal witness in behalf of Omaha expressed the opinion that in making a new basis of class rates from the Missouri River cities the territory comprising the states of Nebraska and Kansas should be treated in its entirety. It seems not unlikely that the necessary readjustments of class rates can not be made unless this is done. As to this, however, no order will be made. Rates to destinations in Kansas are not here in issue and have not been considered in reaching our conclusions.

The differences in classification ratings and exceptions here involved cause unjust discrimination and undue prejudice and disadvantage against all of the complaining cities. Substantial uniformity in classification ratings and exceptions on shipments from competing jobbing centers is as essential as nondiscriminatory rates. See *Railroad Commission of Louisiana v. St. L. S. W. Ry. Co.*, 34 I. C. C., 472, 478. It is obvious that to require the defendants to apply the Nebraska classification ratings from Council Bluffs, for example, would result in unjust discrimination against Iowa cities east thereof. The western classification has been approved in large measure by this Commission. *Western Classification Case, supra*. It is our conclusion that defendants should remove the unjust discriminations and the undue prejudices and disadvantages in classification ratings and exceptions here found to exist by applying the western classification and exceptions applicable on interstate traffic to transportation between the complaining cities and points in Nebraska and between Omaha and other competing Nebraska cities and points in that state.

Complainants ask reparation on past shipments, but in view of the broad aspects of these cases and the general readjustment which our decision makes necessary, reparation is denied.

Upon the evidence of record in these cases we further find:

1. That the present class rates published, maintained, and applied by defendants on interstate shipments between Sioux City and Council Bluffs, Iowa, St. Joseph and Kansas City, Mo., and Atchi-

son, Kans., and points in the state of Nebraska, are and for the future will be unjust and unreasonable to the extent that they exceed the scale of reasonable maximum class rates set forth in the next succeeding paragraph.

2. That the class rates maintained by defendants between said Sioux City, Council Bluffs, St. Joseph, Kansas City, and Atchison and points in the state of Nebraska should not exceed the rates per 100 pounds named in the following scale, which scale of class rates as maxima we find to be just and reasonable:

Scale of reasonable maximum class rates, in cents per 100 pounds, for application between Sioux City and Council Bluffs, Iowa, St. Joseph and Kansas City, Mo., and Atchison, Kans., and points in the state of Nebraska.

Miles.	1	2	3	4	5	A	B	C	D	E
1 to 5.....	23.0	19.5	16.1	13.8	10.3	11.5	8.0	6.9	5.7	3.9
6 to 10.....	24.0	20.4	16.8	14.4	10.8	12.0	8.4	7.2	6.0	4.1
11 to 15.....	25.0	21.2	17.5	15.0	11.2	12.5	8.7	7.5	6.2	4.2
16 to 20.....	26.0	22.1	18.2	15.6	11.7	13.0	9.1	7.8	6.5	4.4
21 to 25.....	27.0	22.9	18.9	16.2	12.1	13.5	9.4	8.1	6.7	4.6
26 to 30.....	28.0	23.8	19.6	16.8	12.6	14.0	9.8	8.4	7.0	4.8
31 to 35.....	29.0	24.6	20.3	17.4	13.0	14.5	10.1	8.7	7.2	4.9
36 to 40.....	30.0	25.5	21.0	18.0	13.5	15.0	10.5	9.0	7.5	5.1
41 to 45.....	31.0	26.3	21.7	18.6	13.9	15.5	10.8	9.3	7.7	5.3
46 to 50.....	32.0	27.2	22.4	19.2	14.4	16.0	11.2	9.6	8.0	5.4
51 to 55.....	33.0	28.0	23.1	19.8	14.8	16.5	11.5	9.9	8.2	5.6
56 to 60.....	34.0	28.9	23.8	20.4	15.3	17.0	11.9	10.2	8.5	5.8
61 to 65.....	35.0	29.7	24.5	21.0	15.7	17.5	12.2	10.5	8.7	5.9
66 to 70.....	36.0	30.6	25.2	21.6	16.2	18.0	12.6	10.8	9.0	6.1
71 to 75.....	37.0	31.4	25.9	22.2	16.6	18.5	12.9	11.1	9.2	6.3
76 to 80.....	38.0	32.3	26.6	22.8	17.1	19.0	13.3	11.4	9.5	6.5
81 to 85.....	39.0	33.1	27.3	23.4	17.5	19.5	13.6	11.7	9.7	6.6
86 to 90.....	40.0	34.0	28.0	24.0	18.0	20.0	14.0	12.0	10.0	6.8
91 to 95.....	41.0	34.8	28.7	24.6	18.4	20.5	14.3	12.3	10.2	7.0
96 to 100.....	42.0	35.7	29.4	25.2	18.9	21.0	14.7	12.6	10.5	7.1
101 to 110.....	44.0	37.4	30.8	26.4	19.8	22.0	15.4	13.2	11.0	7.5
111 to 120.....	46.0	39.1	32.2	27.6	20.7	23.0	16.1	13.8	11.5	7.8
121 to 130.....	48.0	40.8	33.6	28.8	21.6	24.0	16.8	14.4	12.0	8.2
131 to 140.....	50.0	42.5	35.0	30.0	22.5	25.0	17.5	15.0	12.5	8.5
141 to 150.....	52.0	44.2	36.4	31.2	23.4	26.0	18.2	15.6	13.0	8.8
151 to 160.....	54.0	45.9	37.8	32.4	24.3	27.0	18.9	16.2	13.5	9.2
161 to 170.....	56.0	47.6	39.2	33.6	25.2	28.0	19.6	16.8	14.0	9.5
171 to 180.....	58.0	49.3	40.6	34.8	26.1	29.0	20.3	17.4	14.5	9.9
181 to 190.....	60.0	51.0	42.0	36.0	27.0	30.0	21.0	18.0	15.0	10.2
191 to 200.....	62.0	52.7	43.4	37.2	27.9	31.0	21.7	18.6	15.5	10.5
201 to 220.....	65.0	55.2	45.5	39.0	29.2	32.5	22.7	19.5	16.2	11.0
221 to 240.....	68.0	57.8	47.6	40.8	30.6	34.0	23.8	20.4	17.0	11.6
241 to 260.....	71.0	60.3	49.7	42.6	31.9	35.5	24.9	21.3	17.7	12.1
261 to 280.....	74.0	62.9	51.8	44.4	33.3	37.0	25.9	22.2	18.5	12.6
281 to 300.....	77.0	65.4	53.9	46.2	34.6	38.5	26.9	23.1	19.2	13.1
301 to 320.....	80.0	68.0	56.0	48.0	36.0	40.0	28.0	24.0	20.0	13.6
321 to 340.....	83.0	70.5	58.1	49.8	37.3	41.5	29.0	24.9	20.7	14.1
341 to 360.....	86.0	73.1	60.2	51.6	38.7	43.0	30.1	25.8	21.5	14.6
361 to 380.....	89.0	75.6	62.3	53.4	40.0	44.5	31.1	26.7	22.2	15.1
381 to 400.....	92.0	78.2	64.4	55.2	41.4	46.0	32.2	27.6	23.0	15.6
401 to 420.....	95.0	80.7	66.5	57.0	42.7	47.5	33.2	28.5	23.7	16.1
421 to 440.....	98.0	83.3	68.6	58.8	44.1	49.0	34.3	29.4	24.5	16.7
441 to 460.....	101.0	85.8	70.7	60.6	45.4	50.5	35.3	30.3	25.2	17.2
461 to 480.....	104.0	88.4	72.8	62.4	46.8	52.0	36.4	31.2	26.0	17.7
481 to 500.....	107.0	90.9	74.9	64.2	48.1	53.5	37.5	32.1	26.7	18.2
501 to 520.....	110.0	93.5	77.0	66.0	49.5	55.0	38.5	33.0	27.5	18.7
521 to 540.....	113.0	96.0	79.1	67.8	50.8	56.5	39.5	33.9	28.2	19.2
541 to 560.....	116.0	98.6	81.2	69.6	52.2	58.0	40.6	34.8	29.0	19.7
561 to 580.....	119.0	101.1	83.3	71.4	53.5	59.5	41.6	35.7	29.7	20.2
581 to 600.....	122.0	103.7	85.4	73.2	54.9	61.1	42.7	36.6	30.6	20.7
601 to 620.....	125.0	106.2	87.5	75.0	56.2	62.5	43.7	37.5	31.2	21.2
621 to 640.....	128.0	108.8	89.6	76.8	57.6	64.0	44.8	38.4	32.0	21.8
641 to 660.....	131.0	111.3	91.7	78.6	58.9	65.5	45.8	39.3	32.7	22.3
661 to 680.....	134.0	113.9	93.8	80.4	60.3	67.0	46.9	40.2	33.5	22.8
681 to 700.....	137.0	116.4	95.9	82.2	61.6	68.5	47.9	41.1	34.2	23.3

For transportation over two or more lines, not parts of the same system and not under a common ownership or control, the following arbitraries, in cents per 100 pounds, may be added:

Class -----	1	2	3	4	5	A	B	C	D	E
Cents-----	5	4	3½	3	2½	2½	2	1½	1½	1

3. That defendants publish, maintain, and apply higher class rates between said Sioux City, Council Bluffs, St. Joseph, Kansas City, and Atchison, and points in the state of Nebraska than they contemporaneously publish, maintain, and apply between Omaha, Lincoln, Fremont, Beatrice, Fairbury, Plattsmouth, Hastings, St. Paul, Nebraska City, Grand Island, Columbus, Kearney, and Norfolk, and points in the state of Nebraska for transportation under substantially similar circumstances and conditions, and that they thereby give an undue and unreasonable preference and advantage to said Omaha, Lincoln, Fremont, Beatrice, Fairbury, Plattsmouth, Hastings, St. Paul, Nebraska City, Grand Island, Columbus, Kearney, and Norfolk and subject said Sioux City, Council Bluffs, St. Joseph, Kansas City, and Atchison to undue and unreasonable prejudice and disadvantage.

4. That defendants publish, maintain, and apply higher classification ratings, and exceptions thereto, on interstate shipments between said Sioux City, Council Bluffs, St. Joseph, Kansas City, and Atchison, and points in the state of Nebraska than they contemporaneously publish, maintain, and apply on intrastate shipments of like commodities for transportation under substantially similar circumstances and conditions between Omaha, Lincoln, Fremont, Beatrice, Fairbury, Plattsmouth, Hastings, St. Paul, Nebraska City, Grand Island, Columbus, Kearney, and Norfolk, Nebr., and points in the state of Nebraska, and that they thereby give an undue and unreasonable preference and advantage to said Omaha, Lincoln, Fremont, Beatrice, Fairbury, Plattsmouth, Hastings, St. Paul, Nebraska City, Grand Island, Columbus, Kearney, and Norfolk, and subject said Sioux City, Council Bluffs, St. Joseph, Kansas City, and Atchison to undue and unreasonable prejudice and disadvantage.

5. That defendants publish, maintain, and apply class rates between said Omaha, Lincoln, Fremont, Beatrice, Fairbury, Plattsmouth, Hastings, St. Paul, Nebraska City, Grand Island, Columbus, Kearney, and Norfolk, Nebr., and points in the state of Nebraska which are intended to and do equalize in large measure transportation charges between said Omaha, Lincoln, Fremont, Beatrice, Fairbury, Plattsmouth, Nebraska City, Grand Island, Columbus, Kearney, and Norfolk, and said points in the state of Nebraska and do not publish, maintain, and apply on shipments which are transported under substantially similar circumstances and conditions be-

tween said Sioux City, Council Bluffs, St. Joseph, Kansas City, and Atchison, and points in the state of Nebraska, class rates which embody the same or similar equalizations, and that thereby defendants give an undue and unreasonable preference and advantage to said Omaha, Lincoln, Fremont, Beatrice, Fairbury, Plattsmouth, Hastings, St. Paul, Nebraska City, Grand Island, Columbus, Kearney, and Norfolk, and subject said Sioux City, Council Bluffs, St. Joseph, Kansas City, and Atchison to undue and unreasonable prejudice and disadvantage.

6. That the present relation of class rates published, maintained, and applied by defendants on interstate shipments between said Sioux City, Council Bluffs, St. Joseph, Atchison, and Kansas City and points in the state of Nebraska with rates published, maintained, and applied contemporaneously under substantially similar circumstances and conditions between said Omaha, Lincoln, Fremont, Beatrice, Fairbury, Plattsmouth, Hastings, St. Paul, Nebraska City, Grand Island, Columbus, Kearney, and Norfolk and points in the state of Nebraska gives, and for the future will give, an undue and unreasonable preference and advantage to said Omaha, Lincoln, Fremont, Beatrice, Fairbury, Plattsmouth, Hastings, St. Paul, Nebraska City, Grand Island, Columbus, Kearney, and Norfolk, and subjects and will subject said Sioux City, Council Bluffs, St. Joseph, Atchison, and Kansas City to undue and unreasonable prejudice and disadvantage.

7. That an order should be entered requiring said defendants, according as they participate in the transportation, (1) to cease and desist, on or before September 25, 1916, and thereafter to abstain from publishing, demanding, or collecting their present class rates between said Sioux City, Council Bluffs, St. Joseph, Kansas City, and Atchison and points in the state of Nebraska in so far as said rates exceed the scale of reasonable maximum class rates set forth in paragraph 2, *supra*; (2) to establish upon statutory notice and to maintain and apply between said Sioux City, Council Bluffs, St. Joseph, Kansas City, and Atchison and points in the state of Nebraska class rates which shall not exceed the scale of reasonable maximum class rates set forth in paragraph 2, *supra*; (3) to cease and desist from giving any undue preference or advantage in class rates to said Omaha, Lincoln, Beatrice, Fremont, Fairbury, Plattsmouth, Hastings, St. Paul, Nebraska City, Grand Island, Columbus, Kearney, and Norfolk on traffic to or from destinations in the state of Nebraska, and from subjecting said Sioux City, Council Bluffs, St. Joseph, Kansas City, and Atchison to undue and unreasonable prejudice or disadvantage with respect to said rates; (4) to cease and desist from publishing, maintaining, or applying higher classification ratings, and

exceptions thereto, on interstate shipments between said Sioux City, Council Bluffs, St. Joseph, Kansas City, and Atchison and points in the state of Nebraska than they contemporaneously publish, maintain, or apply on like shipments between said Omaha, Lincoln, Fremont, Beatrice, Fairbury, Plattsmouth, Hastings, St. Paul, Nebraska City, Grand Island, Columbus, Kearney, and Norfolk, Nebr., and points in the state of Nebraska; (5) to cease and desist from publishing, maintaining, or applying class rates between said Omaha, Lincoln, Fremont, Beatrice, Fairbury, Plattsmouth, Nebraska City, Grand Island, Columbus, Kearney, and Norfolk and points in the state of Nebraska which equalize transportation charges between the said several cities named and said points in the state of Nebraska while failing contemporaneously to publish, maintain, and apply class rates between said Sioux City, Council Bluffs, St. Joseph, Kansas City, and Atchison and said points in the state of Nebraska which effect substantially the same or similar equalizations; (6) to cease and desist from establishing, maintaining, or applying any relation of class rates between the said several cities named in paragraph 6, *supra*, which is found in this report to result in undue preference, prejudice, or disadvantage: *Provided, however*, That said order shall not restrain said defendants from establishing, maintaining, and applying class rates between the said several named cities which will restore the relationships between said cities as they existed prior to September 6, 1914: *And provided further*, That it will be the duty of defendants under said order duly and justly to equalize the terms and conditions under which they will transport traffic of a similar character moving under class rates between said Sioux City, Council Bluffs, St. Joseph, Kansas City, and Atchison and points in the state of Nebraska and between said Omaha, Lincoln, Fremont, Beatrice, Fairbury, Plattsmouth, Hastings, St. Paul, Nebraska City, Grand Island, Columbus, Kearney, and Norfolk and points in the state of Nebraska, and that in performing this duty the scale of reasonable maximum class rates set forth in paragraph 2, *supra*, shall not be exceeded.

Such an order will be entered.

INVESTIGATION AND SUSPENSION DOCKET No. 794.
NEW YORK STORAGE.

Submitted April 29, 1916. Decided June 26, 1916.

Proposed increased charges for storage of domestic and export freight held at New York harbor points, found to have been justified.

R. W. Barrett and John M. Sternhagen for respondents.

Charles J. Austin for New York Produce Exchange, protestant.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

This is the third occasion we have had within the past few months formally to consider changes proposed by the carriers in respect of their storage charges on domestic and export freight held in pier warehouses owned or controlled by the carriers serving the port of New York.

Prior to January 1, 1915, inbound domestic freight awaiting delivery in New York harbor or for transshipment coastwise could be held without storage charges for a period of 10 days, either in cars or in railroad warehouses on the New Jersey shore, or at the Sixtieth street station of the New York Central. The charge for the following 10 days, or fraction thereof, was 1 cent per 100 pounds, and for each succeeding 10 days one-half cent per 100 pounds. By tariffs filed to become effective on the date last mentioned the carriers proposed to reduce the free storage period from 10 days to 5 days, and to make the storage charge thereafter 1 cent per 100 pounds for each succeeding 10 days or fraction thereof. In *Lighterage and Storage Regulations at New York*, 35 I. C. C., 47; 54, it was held that the proposed regulations, in so far as they applied to domestic inbound freight for delivery at New York, had been justified. The respondents later filed tariffs in which storage charges in cents per 100 pounds were proposed, after the expiration of five days' free time, of one-half cent respectively, for the first and second five-day periods, and 1 cent for each of the succeeding five-day periods. These tariffs having been suspended were finally canceled without becoming operative. Thereafter, by special permission of the Commission, the tariffs at present in force were filed to become effective on January 16, 1916, on less than statutory notice. These latter tariffs provided, after five days' free time, a storage charge of one-half cent per 100 pounds for each succeeding five-day period or fraction thereof.

This adjustment apparently proving unsatisfactory, the respondents now propose a storage charge that increases with each successive period of 30 days. That is to say, after the expiration of five days' free time, the charge proposed of one-half cent for each of the successive five-day periods remains constant until six of such periods, or 30 days, have elapsed; for the next six five-day periods the charge proposed is 1 cent, and for the third period of the same duration, 2 cents per 100 pounds. Upon the protest of the New York Produce Exchange, in behalf only of such of its members as are engaged in the flour trade, these proposed charges were suspended; but, although the protestant offered testimony only in reference to the effect of the proposed charges on flour, the respondents nevertheless addressed their testimony to the schedule as a whole, embracing other commodities. The following statement shows the variations in the charges in cents per 100 pounds, after the expiration of free time, during the various periods hereinbefore mentioned:

Periods of storage.	Prior to Jan. 15, 1916.	Suspended I. and S. 780 subsequently canceled.	Effective Jan. 16, 1916, and at present in effect.	Proposed and here under suspension.
5 days.....	1	$\frac{1}{2}$	$\frac{1}{2}$	$\frac{1}{2}$
10 days.....	1	1	1	1
15 days.....	2	2	$1\frac{1}{2}$	$1\frac{1}{2}$
20 days.....	2	3	2	2
25 days.....	3	4	$2\frac{1}{2}$	$2\frac{1}{2}$
30 days.....	3	5	3	3
35 days.....	4	6	$3\frac{1}{2}$	4
40 days.....	4	7	4	5
45 days.....	5	8	$4\frac{1}{2}$	6
50 days.....	5	9	5	7
55 days.....	6	10	$5\frac{1}{2}$	8
60 days.....	6	11	6	9
65 days.....	7	12	$6\frac{1}{2}$	11
70 days.....	7	13	7	13

Export traffic is affected by the proposed charges to the extent that the increased storage charges will apply if such traffic is placed in storage after the expiration of 15 days' free time.

The respondents frankly admit, without offering further justification, that the proposed ascending scale of storage charges is intended to compel the removal of freight from their piers and warehouses within a reasonable period after it is tendered to the consignee for delivery.

The protestants insist: (a) That years ago the respondents constructed and enlarged certain of their warehouses and piers especially for the accommodation of shippers in storing flour and in that way discouraged the development of public warehouses for the same purpose; (b) that therefore the flour shippers at present are largely dependent upon the carriers' facilities and that such storage space has

long been available to them; (c) that in densely populated communities, such as New York City, large quantities of flour must be kept on hand in order to provide against contingencies; (d) that the commodity is of such a nature that it should be excepted from the usual storage rules and charges; (e) that the respondents are under a moral obligation at least to continue the storage service for indefinite periods at charges comparable with those ordinarily assessed by public warehouse companies.

The issue, as just explained, was stated in the record by the examiner at the close of the hearing and was agreed to by the parties. There is much testimony of record concerning the capacity of the respondents' warehouses and piers, the space generally available for the storage of flour, and that available at the time of the hearing; but these considerations bear lightly upon the main issue, which stands out clearly as one of law, involving the respondents' right, as common carriers, to require the removal of freight from their premises within a reasonable time after it has been offered for delivery. These warehouses and piers are furnished by the carriers as an incident to their transportation service, and when the respondents have offered the shippers a reasonable storage period at reasonable charges they have satisfied all the requirements of the law. The flour dealers at New York, however, wish accommodations in excess of a reasonable period, and beyond that which is incident to the transportation service, in order to meet the commercial necessities of their trade in flour. In *Lighterage and Storage Regulations at New York, supra*, we said, page 56:

As already stated, railroad companies are under obligation to store freight only for such period as may be required to afford shippers a reasonable opportunity to remove it.

In *New Orleans Storage Rules and Regulations*, 28 I. C. C., 605, the Commission said:

"This Commission has repeatedly said that it was not part of the duty of a common carrier by rail to furnish warehouses for the storing of articles transported, even though the convenience of its patrons might so require. We have consistently held that carriers might impose such charges as would compel the removal of freight from their depots and freight sheds. We have in several cases sanctioned the imposition of charges like these upon an ascending scale."

Reaffirming this principle, the Commission finds that the proposed increase in the storage charge proposed in the rule under consideration is correct in principle and is not excessive, although the testimony indicates that it exceeds the charge for similar service at public warehouses. Inasmuch as it is the desire of the carriers to secure the release of their facilities rather than to prolong the period of storage, it is suggested that a better rule could be established by providing an ascending scale of charges for periods of five days or even of one day each.

It is a matter of common knowledge that prior to the announcement of our decision in the above case, and since that time there has been an extraordinary congestion of freight at the New York terminals of

the respondents. The situation when at its height was so well known that it is unnecessary to dwell upon it here.

Upon the whole record we find and conclude that the increased charges proposed by the respondents are in substantial accord with the views expressed and the recommendations made by the Commission in *Lighterage and Storage Regulations at New York, supra*. It follows that our order of suspension in the present case should be vacated. It will be so ordered.

INVESTIGATION AND SUSPENSION DOCKET No. 732.
LUMBER FROM LOUISIANA POINTS.

Submitted February 28, 1916. Decided June 27, 1916.

Proposed increased rates on lumber in carloads from Leesville and other points in Louisiana on the Kansas City Southern Railway to Galveston and intermediate points in Texas on the Gulf, Colorado & Santa Fe Railway, found not to have been justified and the schedules under suspension directed to be canceled.

J. M. Souby for Kansas City Southern Railway Company.

Drew Head for Gulf, Colorado & Santa Fe Railway Company.

W. Q. Church for W. R. Pickering Lumber Company.

John A. Sargent for Central Coal & Coke Company.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

This proceeding involves proposed increases in rates on lumber in carloads from Leesville and all stations in Louisiana south thereof on the Kansas City Southern Railway to Galveston and intermediate points in Texas on a branch line of the Gulf, Colorado & Santa Fe Railway, hereinafter called the Santa Fe, which extends from Beaumont to Port Bolivar, Tex. Until July 1, 1914, this branch line was operated by the Gulf & Interstate Railway of Texas. Rates are stated herein in cents per 100 pounds and apply on lumber in carloads.

By schedules filed to take effect October 26, 1915, respondents proposed to cancel a joint rate of 10 cents from the points of origin in question to Galveston, and joint rates ranging from 10 cents to 12½ cents to the intermediate points, and to make effective a rate of 12

cents to Galveston, except on yellow pine for export or coastwise movement, and rates ranging from 12½ cents to 15½ cents on lumber of all kinds to the intermediate points. It is not proposed to increase the present joint rate of 10 cents applicable on yellow pine to Galveston for export or coastwise movement. Upon protest of the W. R. Pickering Lumber Company and the Central Coal & Coke Company, engaged in the manufacture of lumber at affected points on the Kansas City Southern, the operation of the proposed schedules was suspended until August 23, 1916.

The Kansas City Southern filed the proposed schedules at the instance of the Santa Fe. It is willing to maintain the present rates, which were established many years ago in connection with the Gulf & Interstate Railway of Texas before the property of that carrier was acquired by the Santa Fe. In October, 1915, joint rates were first established from points in Louisiana on the Kansas City Southern to nearly all points in Texas on the Santa Fe, and contemporaneously with this adjustment respondents sought to increase the joint rates to Galveston and intermediate stations on the Port Bolivar branch. The greater part of protestants' shipments consist of yellow-pine lumber destined to Galveston for export or coastwise movement. Comparatively few shipments are destined to Galveston for local consumption or to the intermediate points.

A rate of 10 cents applies to Galveston from a large group of originating points in Louisiana. It is a blanket rate applied by the Santa Fe from all stations in Louisiana on its lines, and from stations on the Neame, Carson & Southern, the Louisiana & Pacific, and the Gulf & Sabine River roads with which it connects; by the Sunset Central lines of the Southern Pacific system from stations Cheneyville to Alexandria inclusive, and from stations on connecting lines such as the Lake Charles & Northern, the Louisiana & Pacific, the New Orleans, Texas & Mexico, stations De Quincy to Eunice inclusive, and the St. Louis, Iron Mountain & Southern, stations Alexandria to Manchester inclusive; and by the Galveston, Houston & Henderson Railroad as a delivering carrier from stations on the New Orleans, Texas & Mexico. The short-line distance from Leesville, the most distant point in the Kansas City Southern group, to Galveston, via Beaumont and Port Bolivar, is 174 miles. The 10-cent rate from the Louisiana blanket to Galveston via the other two-line routes mentioned applies for distances ranging from 185 miles to 360 miles. From stations on the New Orleans, Texas & Mexico, De Quincy to Anchorage inclusive, and on the Morgan's Louisiana & Texas road, Cheneyville to Anchorage inclusive, a joint rate of 12 cents to Galveston applies in connection with the Santa Fe. The joint rate to Galveston from Leesville and other stations in Louisi-

ana on the Kansas City Southern is 13½ cents in connection with the Southern Pacific system Sunset Central lines or the Galveston, Houston & Henderson. The Santa Fe contends that in comparison with these rates the proposed rate of 12 cents from Kansas City Southern stations to Galveston is reasonable. Protestants reply, however, that this comparison is of little significance, inasmuch as a 10-cent rate from these points is available via other routes and no traffic would move at the higher rate.

In *Nona Mills Co. v. K. C. S. Ry. Co.*, 39 I. C. C., 125, the complainant attacked the rates on lumber from Leesville to Texas and Oklahoma group points, over the Kansas City Southern and the lines embracing the Santa Fe system. To the Texas groups the rates were uniformly 3 cents per 100 pounds higher than were contemporaneously maintained by the Santa Fe from mills on its line in Louisiana. We held that for the future the joint rates attacked should not exceed the rates contemporaneously in effect from the Santa Fe mills to the same destinations.

Although protestants urge that the same broad principle is involved in the instant case, the Santa Fe does not contend primarily that a uniform differential should be maintained from mills on connecting lines to the destinations in question. Its principal contention is that the present rate of 10 cents is unreasonably low and that the proposed rate of 12 cents would be reasonable in view of the two-line service and the existing transportation conditions.

The Kansas City Southern delivers this traffic to the Santa Fe at Beaumont. The distance from Leesville to Beaumont is 98 miles and from Beaumont to Galveston 76 miles over the short line of the Santa Fe via Port Bolivar and car ferry beyond. The Santa Fe's division of the 10-cent rate is 4 cents per 100 pounds, which yields earnings of \$18.40 per car based on the average weight of 46,000 pounds. It estimates that the cost of ferriage and incidental switching at Port Bolivar and Galveston is \$6.67 per car, which leaves it \$11.73 for its haul from Beaumont to Port Bolivar. Under the 12-cent rate and an accompanying change in the basis of divisions it would earn \$32.20 per car from Beaumont to Galveston, or \$25.53 per car from Beaumont to Port Bolivar. It shows, however, that this route has been closed since August, 1915, when a hurricane swept away 24 miles of track, and that traffic must be sent over its Somerville, Tex., route, a distance of 314 miles from Beaumont and 412 miles from Leesville, as compared with 76 miles from Beaumont and 174 miles from Leesville through Port Bolivar. The Santa Fe receives the same division of the joint rate over either route. This Port Bolivar line experienced a similar catastrophe in 1900 which closed the route for six years. Reconstruction work is

now in progress, but it is said that the operation and maintenance of the line is and necessarily will continue to be most expensive and uncertain.

Lumber from any point in Louisiana routed via the Santa Fe to Galveston must be moved through Somerville during the period of interruption on the Port Bolivar branch, but it is not proposed to increase rates except those from points on the Kansas City Southern. The record does not establish that the present rates to Galveston and intermediate points are unduly low for application via the direct short-line route when that route is open to traffic or afford sufficient justification for maintaining higher rates from Kansas City Southern stations than from stations on other lines in the blanketed territory. The establishment of the proposed increased rates would place protestants at a serious disadvantage in competing with other mills similarly situated, and should not be permitted unless clearly shown to be justified. No such showing has been made upon this record, and it is our conclusion that respondents have not justified the proposed increased rates to Galveston or to the intermediate points in question.

The present relationship of rates to Galveston and intermediate points involves departures from the long-and-short-haul rule but is protected by respondents' fourth section application, which was not set for hearing with this proceeding. The proposed rates would increase the discrimination between the intermediate and more distant points, and to that extent their filing was improper. If they had become effective they would have been unlawful. As to the present differences we express no opinion. That question will be determined in connection with respondents' fourth section application.

An order will be entered requiring that the schedules under suspension herein be canceled.

No. 6891.
MAINE CENTRAL BOAT LINES.

Submitted March 27, 1916. Decided June 22, 1916.

The continued operation by the Maine Central Railroad of the Bath Ferry and of the Penobscot and Frenchman's Bay boat lines found upon the facts of record not to be in contravention of the Panama Canal act.

Seth M. Carter for Maine Central Railroad Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The Maine Central Railroad operates a steamboat service between its rail end at Mount Desert Ferry, on the eastern coast of Maine, and various points on Mount Desert Island and on the shores of Frenchman's Bay. It has a similar boat service between its terminus at Rockland, in the same state, and various points in Penobscot Bay. Between Bath and Woolwich, on the opposite sides of the Kennebec River, which is three-quarters of a mile wide at that point, it also operates a car ferry, known as the Bath Ferry, by means of which its passenger and freight trains cross the river. This ferry, which like similarly situated car ferries resembles more closely a bridge service than a water service, was as a matter of fact originally installed in 1871 and has been maintained since that date to avoid the necessity of building a costly bridge at that point. The ferryboats are possibly within the Panama Canal act technically, but their continued use and ownership by the Maine Central obviously violate none of the provisions of that statute, and the Bath Ferry need not therefore be further considered in this report. The substantial question at issue upon the application and the record here before us is whether, under section 5 of the act to regulate commerce, as amended by section 11 of the Panama Canal act, the Maine Central Railroad Company may lawfully continue the operation of the Penobscot Bay and Mount Desert steamboat lines.

The region around Mount Desert Island and Frenchman's Bay for many years has been notable as a place of summer residence. Prior to 1884 Bar Harbor and other points on the island could be reached from Portland and Boston only by water or by stage from Bangor over the country roads and by crossing a bridge from the mainland to the island and thence to Bar Harbor, a drive of some 50

miles in length. During the year last mentioned the applicant extended its rails from Bangor, then its terminus, to a point on Hancock peninsula in Frenchman's Bay, 42 miles distant, where there was an available site for a ferry connection to the island. A water service to Bar Harbor was then established by the petitioner from that point which is now known as Mount Desert Ferry. Soon afterwards the one steamboat of this water line commenced to make landings at other points on the island and around the bay. The service opened up an entirely new route to these summer resorts and came into direct competition with the all-water service from Portland, Boston, and other points. There followed a rapid development of traffic to and from points on the shores of the bay, until at this time four steamboats are used in the service. They range in tonnage from 294 to 677 gross tons, and carry freight, passengers, express matter, and mail. In 1915 the four steamers carried over 75,000 passengers and handled nearly 8,500 tons of freight into and out of Bar Harbor. They make close connections with the trains of the Maine Central; and by that route a traveler may leave New York at midnight and reach Bar Harbor at noon of the following day. The journey by water takes 24 hours. The boats, or some of them, are operated throughout the year. In making through fares to the boat landings the local fares of the boat lines are added to the rail fares. On through freight whatever is added in arbitrary mileage to the rate up to the rail terminal accrues to the boat line. The exhibits introduced in evidence tend to show that during 1915 the Maine Central's loss in operating the boats approximated \$20,000.

The service in Penobscot Bay is distinctly a summer service and was inaugurated by the Maine Central in 1905 and 1906 in order to develop the islands in that region and to effect the prompt and safe distribution of passengers from its terminus at Rockland to their summer homes on the shores of the bay. The bay is divided into two territories, each of which is served by one steamer. The boats are scheduled to make close connections with the Maine Central trains; they carry freight, passengers, express matter, newspapers, and the mail. During 1915 these steamers handled a total of 13,620 passengers and 716 tons of freight, and were operated at a loss of \$14,138.23, as shown on the petitioner's exhibits.

The Eastern Steamship Company, which is not affiliated in any way with the Maine Central, runs a through line of boats from Boston through Penobscot Bay and the Penobscot River to Bangor. These boats stop at Rockland, from which point auxiliary steamers are operated, by means of which passengers on the through boats may reach all the local landings in Penobscot Bay touched by the Maine Central steamers, except Castine; these steamers stop also

at the landings on Mount Desert Island. The auxiliary boats are scheduled to connect with the through boats. The record shows that all the traffic to and from both bays could not be handled by the boats of either company alone, and it also shows that the service of the Eastern Steamship Company has not been modified since the Maine Central established its own service in Penobscot Bay.

The Panama Canal act has been considered, construed, and applied in *Application S. P. Co. in re Operation S. S. Co.*, 32 I. C. C., 690; *Lake Line Applications Under Panama Canal Act*, 33 I. C. C., 699; *Ocean Steamship Co. of Savannah*, 37 I. C. C., 422, and in other cases; the purpose and scope of the act therefore need not be further considered here. It will suffice to say that the jurisdiction of the Commission in the premises under section 5 of the act, as amended, is not denied by this petitioner. The record before us shows both the Frenchman's Bay line and the Penobscot Bay line of the Maine Central to be mere extensions of its rail service to points that may only be reached by water, and that they are being operated in the interest of the public, are of advantage to the convenience and commerce of the people, and that their continued operation will neither exclude, prevent, nor reduce competition on the routes by water under consideration. As at present conducted, therefore, the operation of these boat lines by the petitioner is not in contravention of the act.

40 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 757.

CLAY FROM FLORIDA.

Submitted May 4, 1916. Decided June 30, 1916.

Proposed increased all-rail and rail-water-and-rail carload rates on kaolin clay from Edgar and Okahumpka, Fla., to points in central freight association territory, and certain points in Pennsylvania and West Virginia, found justified. Orders of suspension thereof vacated.

R. Walton Moore, Edward H. Hart, Willis H. Fowle, William Burger, and J. T. Johnston for respondents.

Charles Conradis and Arthur B. Hayes for protestants.

REPORT OF THE COMMISSION.

DANIELS, Commissioner:

In this proceeding there was suspended the operation of tariffs containing schedules of increased carload rates, all rail, and rail, water, and rail, on kaolin clay from Edgar and Okahumpka, Fla., to points in central freight association territory, as well as to certain points in West Virginia and Pennsylvania. Edgar and Okahumpka are both on the Atlantic Coast Line, Edgar 76 miles and Okahumpka 165 miles south of Jacksonville. The present and proposed rates to representative points are shown in the following table and are stated in cents per net ton:

From Edgar and Okahumpka to—	All rail.		Rail, water, and rail.	
	Present rates.	Proposed rates.	Present rates.	Proposed rates.
Canonsburg, Pa.....	575	630	535	535
Wheeling, W. Va.....	575	630	535	549
Chester, W. Va.....	575	630	.....	549
Newell, W. Va.....	575	630	535	535
Parkersburg, W. Va.....	580	628	555	591
East Liverpool, Ohio.....	575	630	535	549
Sebring, Ohio.....	595	631	555	591
East Palestine, Ohio.....	595	631	555	591
Tiffin, Ohio.....	550	596	575	591
Zanesville, Ohio.....	550	596	575	591

We shall refer first to the all-rail rates.

The points shown in the table are those to which is shipped, the respondents allege, more than two-thirds of the Edgar and Okahumpka all-rail tonnage. They further testify that most of the all-

rail tonnage is shipped to the four points Sebring, East Liverpool, Zanesville, and Chester.

The present all-rail rates to certain points in the vicinity of East Liverpool in eastern Ohio are made by adding 40 cents per ton to the rail-water-and-rail rates through Baltimore. The present rates to points farther west in central freight association territory are constructed by combining a basing rate of \$4.20 to the Ohio River with the established rates beyond, Cincinnati being the principal gateway. The proposed rates are constructed on the same basis as the present rates to the points referred to in the vicinity of East Liverpool, provided that basis will yield to the carriers south of the river a minimum revenue of \$4.20 per ton, failing in which that minimum is used to the Ohio River as a basing rate, to which is added the established rate beyond. The proposed rates to points west of those last referred to, in central freight association territory, are constructed by the use to the Ohio River of a basing rate of \$4.60 per ton, to which are added the established rates beyond. The proposed increases therefore accrue to the lines south of the river, except that the proposed rates reflect the increases north of the river permitted in *The Five Per Cent Case*, 31 I. C. C., 351.

The respondents say that the present method of constructing these rates was adopted about 1901, when it was represented to the rail lines by parties contemplating new clay operations near Okahumpka that approximately 100,000 tons of clay annually would be offered for transportation. The rail lines established the rates in an effort to attract a part of this promised tonnage from the rail-water-and-rail routes. This tonnage, they say, has never materialized. At first the rates were established only in connection with the Louisville & Nashville through Montgomery, but since then they have been made to apply over several other routes. The line originating the traffic and which was mainly instrumental in having the rates established was a part of the old Plant system, which has since been absorbed by the Atlantic Coast Line.

The basis of 40 cents per ton over the rail-water-and-rail rates through Baltimore was established to points most affected by the competition of the rail-and-water routes. The other basis of \$4.20 to the Ohio River plus the established rates beyond was also established to points to which actual rail-water-and-rail shipments had been made, but apparently as to which the competition was not as keen as at the other points, which were nearer to Baltimore. At first the latter basis was extended to only a few points, but from time to time, through error or inadvertence the respondents claim, it was extended to other points, until now it obtains to practically all points in central freight association territory, many of which are

beyond the influence of the rail-water-and-rail competition, and to which in fact the rail-water-and-rail rates are higher than the all-rail rates because of the increased distance of the rail haul from Baltimore. The respondents state that they would be justified, so far as rail-water-and-rail competition is concerned, in applying the full Ohio River combination to these latter points, and that they have not done so only because the difference would be marked between the rates to points in the eastern and western parts of central freight association territory.

The proposed increased basing rate of \$4.60 to Cincinnati is made by combining a proportional rate of \$1 to Jacksonville with a proportional rate of \$3.60 beyond. The rate to Jacksonville proper, a state rate prescribed by the Florida commission, is not on file with this Commission. According to certain statements of record the rate is \$1.50; according to others, \$1.46. The rate from Jacksonville to Cincinnati proper is \$4.40. The present rate from Edgar and Okahumpka to Cincinnati proper is \$5.26. The rate to Cincinnati proper proposed herein is \$5, the Cincinnati rate being reduced and the rates to Dayton, Middletown, Hamilton, and other Ohio points beyond Cincinnati being increased in order to correct violations of the fourth section.

This Florida clay is used chiefly in the ceramic arts in the manufacture of dinnerware, sanitary earthenware, bathroom equipment, floor and wall tile, electric porcelains, and minor specialties like door knobs, rings for hanging gas mantles, and spark plugs. It competes for the most part with clay imported from England, Georgia clay being largely used in the manufacture of paper. The competition of the English clay is the subject of the protestants' chief concern. The annual importation of English clay is between 200,000 and 300,000 tons, perhaps a third of which is used, like the Florida clay, in the manufacture of pottery.

A marked preference exists among potters in favor of English clay. It has been used by them in the past and has been satisfactory, and they are loath to make a change, although the protestants testify that the Florida clay is equal to the English clay and is gradually supplanting it. The Florida clay is said to burn as white as the English clay and to possess much of its strength. It now forms the entire clay content of many of the pottery products enumerated. Its utilization has been slowest in connection with the manufacture of dinnerware. The potters' formulas for dinnerware are delicately balanced, involving the use of numerous clays, and require careful experiments to insure an advisable and safe change. In order to interest the potters in the Florida clay it is said to be necessary to make a lower price than on the English clay.

The Florida clay is worth at the pit about \$6 per ton and the English clay of similar kind for pottery use from \$4 to \$5 per ton at the pit. The ocean rate on the English clay is 9 shillings, or about \$2.25 per ton.

The protestants refer by way of comparison to the import rates on clay from the ports and to the rates on domestic clay from Georgia.

In *Import and Domestic Rates—Clay*, 39 I. C. C., 132, we discussed at length the general commercial and transportation situation affecting the rival English and Georgia clay, and there held that the Georgia rates were not unduly prejudicial in comparison with the import rates. A basing rate of \$2.60 per ton is used to the Ohio River in constructing the Georgia rates. The history of that rate is fully set forth in the report cited and will not be repeated here. It is sufficient here to say that it was the result of efforts largely of the Macon, Dublin & Savannah to place the Georgia clay on a competitive basis with the English clay and was finally participated in by connections only after prolonged negotiations. The average distance from the Georgia pits to Cincinnati, as shown in the report cited, is 609 miles, and the ton-mile revenue yielded by the basing rate of \$2.60 is 4.3 mills. The short-line distance from Edgar to Cincinnati is 881 miles, and from Okahumpka to Cincinnati 963 miles. The proposed basing rate of \$4.60 to Cincinnati therefore yields per ton-mile 5.22 mills from Edgar and 4.78 mills from Okahumpka. The proposed rate to East Liverpool, for example, yields per ton-mile 5.38 mills from Edgar and 5.02 mills from Okahumpka. The Atlantic Coast Line, which originates the Edgar and Okahumpka traffic, does not serve the Georgia pits, nor participate in the rates from Georgia, nor has it any voice in their making.

The protestants refer to an available route through Kenova, W. Va., which would shorten the mileage considerably to certain of the points in issue, especially in West Virginia. The respondents say that the establishment of such a route is now the subject of negotiations among the carriers, but that even if opened it would not materially affect the level of the rates to the points in question with the exception of a few. The respondents further call attention to the fact that, included in the Kenova route suggested by the protestants as affecting the issue now being considered, is the Carolina, Clinchfield & Ohio Railway, which is not a party to the tariffs under suspension.

We conclude that we are not warranted in condemning the proposed rates as unreasonable, or unduly prejudicial by comparison with the rates from Georgia or the import rates on English clay. Nor do we find justification for condemning them when considered from the standpoint of their inherent reasonableness. They yield per ton-mile revenue of from 4 to 6 mills for distances ranging from

approximately 1,000 to 1,400 miles. We accordingly find the proposed all-rail rates are justified.

The record indicates that the protestants have overcome considerable rate differences in the past. They ship in substantial volume over the rail-water-and-rail routes to Trenton, N. J., at a rate of \$4.20 per ton, in competition with the import rate from the port of 70 cents. They have also shipped to England, where their principal competitive clay is produced. We mention this not as affording any justification for the proposed rates, but merely as one of the facts of the general situation. We may not properly permit our judgment upon the reasonableness of rates to be controlled wholly by purely commercial conditions. Such conditions seem to be the main source of the protestants' difficulties in meeting their chief competition with English clay.

The only testimony offered by the respondents with respect to the rail-water-and-rail rates concerned the rate to East Palestine, which is, according to the respondents, the sole point affected by the increase in the rail-water-and-rail rates to which shipments have been made. It is proposed to increase the rate 36 cents per ton, because of a corresponding increase in the rate west of Baltimore. The protestants much prefer the all-rail routes and their chief concern appears to be with the all-rail rates. The rail-water-and-rail shipments are made in sacks, and the protestants' disinclination to use the rail-water-and-rail routes is due largely to losses, damage, and expense resulting from that form of shipment.

We conclude that these rates, rail, water, and rail, should, under the circumstances, be permitted to take effect as a part of the general readjustment, subject to review upon formal complaint if their use shall later become important to the protestants or other shippers.

An order will be entered in accordance with these views.

INVESTIGATION AND SUSPENSION DOCKET No. 777.
EXPORT GRAIN TO GULF PORTS.

Submitted May 3, 1916. Decided June 22, 1916.

Proposed changes in the routing of carload shipments of grain and grain products for export from points on the St. Louis & San Francisco Railroad found justified.

Arthur E. Haid for St. Louis & San Francisco Railroad Company and its receivers.

C. P. Dowlin for Fort Worth & Denver City Railway Company.

C. O. Blake and *Pat Portel* for Chicago, Rock Island & Pacific Railway Company.

Thomas Bond for respondents.

C. L. Fontaine, jr., for Oklahoma City Mill & Elevator Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By a tariff filed to take effect January 10, 1916, the St. Louis & San Francisco Railroad Company, hereinafter called the Frisco, proposed certain changes in the routing of carload shipments of grain and grain products from points in Oklahoma, Kansas, Missouri, Iowa, and Nebraska to Mobile, Ala., Galveston and Texas City, Tex., New Orleans and certain other ports in Louisiana for export. Upon protest by the Oklahoma City Mill & Elevator Company, which mills grain in transit at Oklahoma City, the tariff was suspended until May 9, 1916, and later until November 9, 1916. Protestant is principally interested in the proposed changes in routing through Oklahoma City to New Orleans from Frisco points in western and northwestern Oklahoma and southern Kansas which consist of the cancellation of intermediate routing by way of the Chicago, Rock Island & Pacific Railway, hereinafter called the Rock Island. No other changes have been brought to our attention and only these will be considered.

Some years ago the Rock Island had control of the stock and directed the policies of the Frisco, the two systems being operated apparently as a unit. On December 1, 1909, the stock control of the Frisco passed from the Rock Island, and since that time the Frisco has been operated independently. While they were managed jointly an arrangement was in effect whereby traffic originating on the Frisco was delivered to the Rock Island at the first junction,

and the routes which the Frisco now proposes to cancel were established at that time. These routes short haul the Frisco on traffic which originates on its lines and the proposed changes are intended to give the Frisco longer hauls. No increase is proposed in the rates from or to any of the points named, but one result of the changes in routing would be that protestant could not mill grain shipped from certain Frisco points in transit at Oklahoma City, as Oklahoma City would not be on the direct line of movement to New Orleans.

Points of origin on the Frisco's lines in northern and western Oklahoma are fairly representative. These lines form a scalene triangle with its vertices at Snyder, Enid, and Tulsa. Oklahoma City is about halfway between Snyder and Tulsa on the long leg of the triangle. The Rock Island has a line connecting Enid and Oklahoma City and a line connecting Oklahoma City with Clinton on the Frisco between Enid and Snyder. The principal points of origin are located on the Enid-Tulsa and Enid-Snyder lines. The present tariff provides for routing through Enid, or Clinton, and by way of the Rock Island to Oklahoma City, with milling in transit at Oklahoma City and subsequent forwarding to New Orleans for export. A few points north and west of Enid and south and southwest of Snyder also are involved.

The routes proposed to New Orleans via Sherman, Tex., Hope, Ark., Memphis, Tenn., or Vernon, Tex., would give the Frisco a longer haul, or larger revenue, than the routes now available through Enid or Clinton in connection with the Rock Island. Two other routes would be available from points southwest of Oklahoma City through Lawton or Chickasha, Okla., in connection with the Rock Island and connections. The distances to New Orleans through Enid or Clinton by way of the Rock Island and connections range from about 900 miles to 1,000 miles. The proposed route through Hope would reduce the distances in some instances by about 200 miles, but from most of the points there would not be any material reductions in distances. From a few points the route through Memphis is about 100 miles longer than the routes through Enid or Clinton, but is of substantially the same length from many points. From certain points the route through Vernon also is shorter than the route through Enid or Clinton. The routes proposed would not as a whole be unreasonably long in comparison with the present routes in which the Rock Island participates.

During 1915 protestant purchased 256 carloads, or 16 per cent, of the grain grown on the Frisco lines described. About 30 per cent of all the grain shipped by protestant into Oklahoma City originates on the Frisco. During the period from July 1, 1915, to February

1, 1916, protestant milled 44 carloads of wheat which originated at points from which the present routing through Oklahoma City to New Orleans would be canceled by the proposed changes. From many points south of Oklahoma City, however, and from points on the Snyder-Enid line, routing through Oklahoma City to New Orleans would still apply.

Protestant urges that the proposed cancellation of routes would increase the rates from the points named by way of Oklahoma City for milling in transit to New Orleans and that it could no longer purchase grain from these points, mill it at Oklahoma City, and export the products through New Orleans in competition with mills in Kansas and Missouri on a direct line to New Orleans. Apparently no other mills in Oklahoma would be materially benefited by the proposed changes, nor is it shown that the Kansas and Missouri mills engage in the export flour business through New Orleans.

The Rock Island serves the general territory in controversy, and Oklahoma City and the protestant's mill are also served by the Atchison, Topeka & Santa Fe Railway and the Missouri, Kansas & Texas Railway. Protestant has transit arrangements at Oklahoma City on shipments of export grain from points on these lines to the Gulf. The routes which respondent proposes to maintain are practicable, and the mere fact that over them Oklahoma City is not intermediate to New Orleans from certain points of origin and that protestant would no longer receive transit service is not sufficient to deprive the Frisco of its long haul.

The proposed tariff changes have been justified, and our order of suspension will be vacated.

40 I. C. C.

No. 7746.
INTERNATIONAL LUMBER COMPANY
v.
CANADIAN NORTHERN RAILWAY COMPANY ET AL.

Submitted February 9, 1916. Decided June 22, 1916.

Certain carloads of lumber from Beaudette, Minn., to Sheboygan, Wis., and Belvidere, Ill., found to have been overcharged. Reparation awarded.

B. G. Dahlberg for complainant.

C. C. Wright, Robert H. Widdicombe, and Richard L. Kennedy for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainant is a corporation engaged in the lumber business, with headquarters at International Falls, Minn. By complaint, filed February 11, 1915, it alleges that the rates charged by defendants on certain carloads of lumber shipped from Beaudette, Minn., to Sheboygan, Wis., and Belvidere, Ill., during 1914, were unreasonable. Reparation is asked.

Three shipments were made to Sheboygan on April 22, 1914, June 18, 1914, and September 11, 1914, respectively; one to Belvidere on September 7, 1914. All of the shipments were overcharged as follows:

From Beaudette to—	Car No.	Weight.	Rate charged per 100 pounds.	Charges collected.	Legal rate per 100 pounds.	Legal charges.	Over-charges.
		<i>Pounds.</i>	<i>Cents.</i>		<i>Cents.</i>		
Sheboygan.....	G. T. N. 81136.....	45,700	19	\$86.83	17	\$77.69	\$9.14
Do.....	C. & N. W. 113100..	50,100	19	95.19	17	85.17	10.02
Belvidere.....	C. & N. W. 79268..	46,700	24	112.08	23	107.41	4.67
Sheboygan.....	C. & N. W. 104856.	49,500	19	94.05	17	84.15	9.90

The charges assessed were paid by the consignees on May 27, June 30, September 18, and October 2, 1914, respectively. On September 21, October 30, June 22, and October 17, 1914, respectively, complainant, who was the consignor, received final payments from the consignees covering the invoice price of the lumber minus the freight charges paid by them. During the latter part of November or the first part of December, 1914, claims for the overcharges, with inter-

est, were filed by complainant with Chicago & North Western Railway, and on December 4 and December 7, 1914, the North Western forwarded vouchers to complainant for the amounts of the overcharges, without interest. Complainant declined to accept the amounts offered in settlement and returned the vouchers. The North Western is willing to refund the amounts tendered on December 4 and December 7, 1914, and the single question presented is whether complainants are entitled to interest on these sums.

We declared in effect in *Conference Ruling No. 464* that carriers should pay interest on all unsettled claims for overcharges from the date the charges are improperly collected. In *Scattergood & Co. v. L. S. & M. S. Ry. Co.*, Docket No. 6538, unreported, we applied the ruling and nothing in evidence calls for any different action in this case.

We find that the shipments were overcharged \$33.73; that complainant made the shipments as described and bore charges thereon herein found to have been unlawful; that it has been damaged to the extent of the difference between the charges paid and the charges which would have accrued at the legal rates, and that it is entitled to reparation in the sum of \$33.73, with interest.

An appropriate order will be entered.

40 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 769.
RICE FROM TEXAS AND LOUISIANA.

Submitted May 26, 1916. Decided July 7, 1916.

1. Proposed increased rates on clean rice from producing points in Texas, Louisiana, and Arkansas, from New Orleans, La., from Gulf points, and from Memphis, Tenn., to interstate destinations, with certain exceptions, found justified.
2. Proposed increased rates on rough rice and on rice products found not justified.

H. M. Garwood, Frank W. Gwathmey, R. Walton Moore, Fred G. Wright, Fred H. Wood, A. H. Culwell, William Burger, J. S. Hershey, H. C. Callahan, H. Booth, L. M. Hogsett, and Baker, Botts, Parker & Garwood for respondents.

J. A. Morgan and *A. Pace* for Texas, Arkansas, and Louisiana protestants.

H. H. Haines for Seaboard Rice Milling Company.

H. S. L'Hommedieu for Orange Board of Trade.

J. H. Henderson and *Dwight N. Lewis* for Iowa shippers.

REPORT OF THE COMMISSION.

HALL, Commissioner:

By agency tariff schedules filed to become effective January 1, 10, and 12, 1916, the rail carriers serving the rice fields and mills in the south propose an increase of 5 cents per 100 pounds in the carload rates on clean rice to practically all points in the United States except points in far western states and also except points in the states east of the Mississippi River and south of the Ohio and Potomac rivers, exclusive of those taking Ohio River rates or rates related thereto, to which points increases are also proposed.

In one schedule increases are proposed in less-than-carload rates from Memphis, Tenn., to Ohio and Mississippi river crossings.

Respondents also propose certain increases in rates on rough rice and rice products.

Upon protests of the Houston Chamber of Commerce, rice millers and brokers in Texas and Louisiana, the Southern Rice Growers' Association, and commercial clubs of Kansas City, Kans., St. Joseph, Mo., Omaha, Nebr., and Sioux City, Iowa, the operation of these schedules was suspended by us until April 30, 1916, and later to

October 30, 1916. At the hearing the assistant commerce counsel of the Board of Railroad Commissioners of Iowa presented objections on behalf of dealers in that state.

The rates affected are from producing points in Texas, Louisiana, and Arkansas, from New Orleans, La., from Gulf points, and from Memphis, Tenn.

No justification was offered for the proposed increased rates on rough rice and rice products. Those on less-than-carload shipments of clean rice are the same as the proposed carload rates on the same commodity for the same movement, and would be covered by justification of the latter. We shall, therefore, confine our further examination to rates on clean rice in carloads.

The rice crop of the United States approximately equals the domestic consumption and practically all of it is produced in southeastern Arkansas and in a belt in Texas and Louisiana some 50 miles wide from north to south, and, including the milling points, over 400 miles long from east to west.

New Orleans early became the leading market and milling point for rough rice and thus pivotal in the rate structure applied to clean rice. This is a milled product, worth at wholesale from 4 to 5 cents per pound, classified fifth class, minimum 40,000 pounds, in western classification, and sixth class, any quantity, in southern classification. Under commodity rates the carload minimum is in some cases 24,000, in some 30,000, and in others 40,000 pounds. The average loading is not shown definitely but is probably between 35,000 and 40,000 pounds.

When the milling industry began at New Orleans the rate, which here and throughout this report is stated in cents per 100 pounds, was 22 cents from New Orleans to St. Louis. This rate, established prior to 1910, was increased by 2 cents in 1908, and the proposed increase of 5 cents would make it 29 cents.

The rates from Texas bear a relation to the rates from New Orleans which was in part prescribed by us. *Mutual Rice Trade & Devel. Asso. Houston v. I. & G. N. R. R.*, 23 I. C. C., 219. The present relationship between rates from New Orleans and rates from Memphis to points on and north of the Ohio River was likewise prescribed by us in *Memphis Freight Bureau v. I. C. R. R. Co.*, 30 I. C. C., 471. Generally no change is proposed in these adjustments.

Rates from producing points in Texas, Louisiana, and Arkansas to most points are differentially related to those from New Orleans.

It follows that the history of the rate from New Orleans to St. Louis and the reasons which led to that rate may be taken as fairly illustrative. In making it the carriers had to consider water competition not only to St. Louis but to Memphis and points on the Ohio River. *Memphis Freight Bureau v. I. C. R. R. Co.*, *supra*.

While mileage has not been wholly disregarded, the rice rates were intended to enable growers throughout the producing area to compete in the various consuming markets, and to an extent are group rates.

Generally the proposed rates are lower than the corresponding class rates. From New Orleans to Ohio River crossings and St. Louis the sixth-class rates average 17 per cent higher than the proposed rates. To interior points in Illinois, Indiana, Michigan, Ohio, and Wisconsin the class rates are from 9.8 to 19.6 per cent higher than the proposed rates. To some of the Missouri River cities and points beyond, where the rates are governed by western classification, the proposed rates from New Orleans and Gulf points exceed the fifth-class rate, in some instances by 1, in others by 2 and 3 cents.

As already mentioned respondents do not propose in the schedules under suspension to increase rates to the southeast from any of the originating points named. The rates from New Orleans, upon which the rates from the other points are based, have been in effect for a number of years with no change except some readjustment made to comply with the order of the Commission in *Fourth Section Violations in the Southeast*, 30 I. C. C., 153. These existing rates to the southeast are generally higher for similar distances than the proposed rates. This is illustrated by the subjoined table:

Comparison of proposed rates on clean rice, carloads, from New Orleans, La., to Cairo, Ill., Evansville, Ind., St. Louis, Mo., and Louisville, Ky., with rates on the same commodity from New Orleans to jobbing points in southeastern territory for approximately the same distances.

To—	Distance.	Rate.	To—	Distance.	Rate.
	<i>Miles.</i>			<i>Miles.</i>	
Cairo, Ill.....	554	27	Atlanta, Ga.....	493	27
Louisville, Ky.....	779	29	Macon, Ga.....	513	27
St. Louis, Mo.....	705	29	Knoxville, Tenn.....	609	30
Evansville, Ind.....	697	29	Augusta, Ga.....	638	29
Columbus, Ga.....	413	27	Americus, Ga.....	457	29
Decatur, Ala.....	442	27	Valdosta, Ga.....	504	30
Chattanooga, Tenn.....	498	27	Bristol, Tenn.-Va.....	740	35

A fair average of the distances from Texas producing points to St. Louis is 802 miles. For this distance the proposed rate of 34 cents would yield ton-mile revenue of 8.5 mills. The ton-mile earnings from the rice traffic of the Gulf, Colorado & Santa Fe Railway for the year ended June 30, 1915, would have been 9.3 mills if the proposed rates had been in effect. The average ton-mile earnings from all freight traffic for the same year on the Sunset Central lines was 9.08 and on the Santa Fe 9.7 mills. The Louisville & Nashville Railroad, 63.5 per cent of the traffic of which is in products of mines, had for the year 1914 an average earning per ton-mile of 7.78 mills; and, applying the suspended rates to its rice traffic, its earnings therefrom would have been 7.6 mills.

Comparisons are made with rates on sugar and green coffee, two other food products of about the same value as rice. Sugar loads somewhat heavier than rice. The transportation hazard, actual or relative, can not be measured on this record. One carrier shows the amount paid by it for loss and damage to rice, but this fact is of little aid, as the quantity shipped is not shown. One shipper has experienced nominal damage to rice shipments and greater damage to sugar.

Comparisons of rates on these three commodities are proper and were relied on by protestants as well as by respondents. Protestants insist, however, that in making such comparisons the same points of origin and destination should be used and direct attention to the sugar rates from New Orleans to points like St. Louis and other river crossings, and also to the rates from Sugarland, Tex., which must of necessity be made with some reference to the rates from New Orleans. It is well known that the rates on sugar from New Orleans are made in competition with the water rates therefrom and with the rates from the north Atlantic seaboard. *Rates on Sugar*, 31 I. C. C., 495; *Sugar Rates from New Orleans*, 32 I. C. C., 606. The carriers may if they choose meet this competition without the resulting rates becoming the gauge of rates to noncompetitive points or of rates on a commodity of similar transportation incidents. The use for comparison of sugar rates to noncompetitive points is therefore warranted.

The proposed rate of 29 cents on clean rice from New Orleans to St. Louis, a distance of 705 miles, would yield a revenue per ton-mile of 8.2 mills. Relatively to distance the proposed rates to points like Fort Wayne, Ind., Milwaukee, Wis., and Battle Creek, Mich., are lower. Compared with these the rates on sugar from New Orleans to a few points are as follows:

To—	Distance.	Rate.	Yield per ton-mile.
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Dublin, Ga.....	552	35	12.7
Greenville, S. C.....	654	40	12.23
Oklahoma City, Okla.....	677	40	11.81

With relation to the water compelled rate to the river crossings, we authorized rates on sugar in *Sugar Rates from New Orleans*, *supra*, of 25 cents for distances over the Louisville & Nashville of 360 to 529 miles and of 28 cents for distances of 529 to 836 miles. The distances for which the rates then prescribed apply over lines other than the Louisville & Nashville were not shown. The 25-cent rate applied to destinations between 360 miles from New Orleans and the southern boundary of Tennessee, and the 28-cent rate between

this boundary and the Ohio River. Generally, the proposed rates on clean rice are lower per mile than the existing rates to noncompetitive points on sugar.

What has been said of sugar rates in comparison with rice rates applies to a comparison between the rates on rice and green coffee. Rice rates are not always lower than noncompetitive rates on coffee and sugar. From New Orleans to interior points in Iowa and Minnesota the proposed rates on rice are considerably higher than existing rates on sugar or coffee. These rice rates, however, would yield revenue per ton-mile and car-mile about the same as from rice rates to other destinations named in the suspended schedules.

Comparison is also made with rates on brewers' rice. This has an average value of 1½ cents per pound, less than half that of clean rice. The carload minimum is 40,000 pounds and the average loading is about 60,000 pounds, higher by at least one-third than the average loading of clean rice. Using the rates found by us to have been justified in *1915 Western Rate Advance Case*, 35 I. C. C., 497, 611, it appears that the revenue per car-mile, which, owing to the difference in loading, is fairer for comparison than the revenue per ton-mile, would be practically the same on clean rice under the proposed rates as it is on brewers' rice from the rates so approved. This appears more in detail from the following table, in which the western classification minimum, 40,000 pounds, for clean rice is used as its average loading, although probably above the average, as previously stated:

From New Orleans, La., to—	Dis- tance.	Carload rates on—					
		Clean rice (proposed), average loading 40 000 pounds.			Brewers' rice, average loading 60,000 pounds.		
		Rate.	Earn- ings per ton- mile.	Earn- ings per car- mile.	Rate.	Earn- ings per ton- mile.	Earn- ings per car- mile.
	Miles.	Cents.	Mills.	Cents.	Cents.	Mills.	Cents.
Calro, Ill.....	558	27.0	9.7	19.4	17.5	6.8	18.9
Chicago, Ill.....	920	35.0	7.6	15.2	23.5	5.1	15.8
Cincinnati, Ohio.....	836	32.0	7.7	15.4	22.0	5.8	15.9
Louisville, Ky.....	748	29.0	7.8	15.6	20.0	5.8	15.9
Milwaukee, Wis.....	1,005	37.0	7.4	14.8	25.5	5.1	15.3
Peoria, Ill.....	838	35.0	8.4	16.8	23.5	5.6	16.8
St. Louis, Mo.....	707	29.0	8.2	16.4	20.0	5.7	17.1

Other comparisons were made, as with rates on flour from grain-producing points in Kansas to Houston, which in some instances yield higher and in others lower revenue per ton-mile than would the proposed rates on rice from producing points in Texas to consuming points in Kansas; and with rates on mahogany lumber, lumber, alcohol, and turpentine, commodities not sufficiently similar to rice to call for analysis of the comparisons thereof relied upon by protestants.

To points in Iowa from Lake Charles, La., the rates on cowpeas, a commodity bearing some transportation analogy to rice, are generally lower, although in a few instances higher, than the rates on rice.

The proposed rates to Iowa, for carloads, are as high in some instances as the less-than-carload commodity rates permitted to be canceled in *1915 Western Rate Advance Case, supra*.

The present through rates on rice from New Orleans and Gulf points to interior Iowa points exceed the rates to Keokuk, Fort Madison, Burlington, Muscatine, Clinton, and Dubuque, Iowa, plus the local intrastate rates from these points to the interior points, by amounts ranging from 0.3 to 2.3 cents. These rates, it appears, are on file with this Commission, to be applied when no through rates are published. The same excess of the through rate over the combination of the intermediate rates will exist should the increased rates become effective. These are in violation of the intermediate clause of section 4 of the act to regulate commerce. *Through Rates to Points in Louisiana and Texas*, 38 I. C. C., 153, 163, 164.

The schedules under suspension propose increased rates to points east of Pittsburgh, Pa., in the interior of Pennsylvania, New York and New England, and Atlantic ports, from points in southwestern Louisiana without a corresponding increase from points in southeastern Texas. There appears to be no reason why the rates from southwestern Louisiana should be higher than from southeastern Texas and respondents will be expected to restore the parity formerly prevailing.

As already stated, to some of the Missouri River cities and points beyond, where the rates are governed by western classification, the proposed rates from New Orleans and Gulf points exceed the fifth-class rate. To the extent of this excess we find that they have not been justified. We are further of opinion and find that the proposed rates from New Orleans and Gulf points to interior Iowa points have not been justified to the extent that they exceed the aggregate of intermediate rates subject to the act. With these exceptions we find that the rates on clean rice named in the schedules under suspension have been justified.

We are further of opinion and find that the proposed rates on rough rice and rice products have not been justified and must be canceled. An order conforming to these findings will be entered.

40 I. C. C.

No. 8180.

A. H. KERR & COMPANY ET AL.

v.

SAND SPRINGS RAILWAY COMPANY ET AL.

Submitted February 17, 1916. Decided June 23, 1916.

Upon complaint that rates for the transportation of glass fruit jars and jelly glasses in carloads from Sand Springs, Okla., to Pacific coast terminals and certain intermediate points are unreasonable *per se*, and that the relation of these rates to rates on the same articles from Muncie, Ind., Wheeling, W. Va., and Washington, Pa., to the same destinations is unduly preferential to complainants' competitors located at Muncie, Wheeling, and Washington; *Held*:

1. That the rates from Sand Springs have not been shown to be unreasonable *per se*.
2. That the relation of rates to the Pacific coast terminals here attacked is unduly prejudicial to complainants and unduly preferential of their competitors.

John S. Burchmore and *Luther M. Walter* for complainants.

T. J. Norton for Atchison, Topeka & Santa Fe Railway Company.

C. S. Burg for Missouri, Kansas & Texas lines.

John F. Finerty and *J. G. Trimble* for other defendants.

REPORT OF THE COMMISSION.

HALL, *Commissioner*:

The complainants are A. H. Kerr & Company, a partnership, manufacturing glass fruit jars and jelly glasses at Sand Springs, Okla., a suburb of Tulsa, Okla., and Kerr Glass Manufacturing Company, an Oregon corporation, engaged in the distribution and sale of those articles. By complaint, filed July 26, 1915, it is alleged, in substance, that the rates for the transportation of glass fruit jars and jelly glasses in carloads from Sand Springs to Pacific coast terminals and certain intermediate points are unreasonable *per se*, and that the relation of these rates to rates on the same articles from Muncie, Ind., Wheeling, W. Va., and Washington, Pa., to the same destinations is unduly preferential to complainants' competitors located at Muncie, Wheeling, and Washington. From those points and from Sand Springs the rate on glass fruit jars and jelly glasses in carloads to the Pacific coast terminals is 75 cents per 100 pounds, minimum weight 30,000 pounds. The prayer of the complaint is that defendants be required to establish a rate not higher than 65 cents from Sand Springs to the Pacific coast terminals and lower rates to intermediate points; to cease and desist from maintaining

the same rates from Muncie, Wheeling, and Washington to these terminals as from Sand Springs; and to maintain rates at least 10 cents lower from Sand Springs than from Muncie, Wheeling, and Washington.

The rates here attacked to points of destination intermediate to the Pacific coast terminals need not be discussed. They are made with relation to the terminal rates under the requirements of our fourth section orders. *Commodity Rates to Pacific Coast Terminals*, 32 I. C. C., 611. Complainants acknowledge the propriety of this adjustment, based upon reasonable terminal rates.

Competition in the manufacture and sale of fruit jars is keen. Fifteen years ago some 20 factories were making this product. Now the business is confined to four manufacturers. One has plants at Muncie and at Wichita Falls, Tex.; another, at Wheeling and at Washington; the third, at Hillsboro, Ill., and at Sapulpa, Okla.; the fourth is complainant A. H. Kerr & Company. The Pacific coast is an important market and the chief competition there encountered by this complainant is with the plants located at Muncie, Wheeling, and Washington. Prior to November 15, 1914, the rate from those points to the Pacific coast terminals was 85 cents, from Sand Springs 75 cents. On that date the rate from Sand Springs to the California terminals was increased to 85 cents. On June 10, 1915, the rate from Muncie, Wheeling, and Washington to the Pacific coast terminals and the rate from Sand Springs to the California terminals were reduced to 75 cents. The effect of these readjustments was to remove the differential of 10 cents formerly existing in the rate from Sand Springs under the rate from Muncie, Wheeling, and Washington. Whether the resulting parity of rates is unduly preferential is the principal question presented for decision, although the reasonableness of the rate from Sand Springs is also in issue.

In the following table, taken from complainants' evidence, are shown the distances from Sand Springs, Muncie, and Washington to representative terminal points, together with the earnings per ton-mile and per car-mile, under the current rate of 75 cents. The figures given for Washington are representative of Wheeling.

To—	From Sand Springs.			From Muncie.			From Washington.		
	Miles.	Ton-mile earnings.	Car-mile earnings. ¹	Miles.	Ton-mile earnings.	Car-mile earnings. ¹	Miles.	Ton-mile earnings.	Car-mile earnings. ¹
		<i>Mills.</i>	<i>Cents.</i>		<i>Mills.</i>	<i>Cents.</i>		<i>Mills.</i>	<i>Cents.</i>
San Diego, Cal.	1,801	8.4	12.5	2,526	5.9	8.9	2,837	5.3	7.9
San Francisco, Cal.	1,986	7.6	11.3	2,458	6.1	9.2	2,776	5.4	8.1
Portland, Oreg.	2,137	7.0	10.5	2,474	6.0	9.1	2,792	5.3	8.1
Seattle, Wash.	2,245	6.7	10.0	2,436	6.2	9.2	2,754	5.4	8.2

¹ Based on the minimum weight of 30,000 pounds.

It is obvious that the transportation service from Muncie and Washington is substantially greater than from Sand Springs, and complainants urge that this rate adjustment deprives Sand Springs of the advantage of its geographical location. They point to the fact that on eastbound traffic the disadvantages of that location are fully reflected in the rates. Thus to Chicago the rate on fruit jars and jelly glasses from Sand Springs is 27 cents, from Muncie 12.1 cents, from Washington 18.9 cents. To New York the rate from Sand Springs is 58.5 cents, from Muncie 28.4 cents, from Washington 18.9 cents. The effect of this adjustment is practically to exclude complainants from eastern markets.

Defendants do not attempt to justify the rate adjustment by any transportation considerations, nor do they suggest that the several points of origin are so located as to form a natural group from which a blanket rate would naturally apply. They regard the rate from Muncie, Wheeling, and Washington as unduly low, and assert that it was reduced to meet water competition. The evidence of this competition is unconvincing. It covers the quotation of certain rates by water lines and the movement of a few carloads of fruit jars and jelly glasses through the Panama Canal in 1915 from some manufacturing point not disclosed. Their witnesses admit that transportation by water is not conducted under normal conditions and that shipping via the Panama Canal has been greatly restricted by the diversion of boats to other service.

It is clear that the adjustment of rates before us has been influenced by competition between the manufacturers. In this connection it should be noted that in November, 1914, the differential in the rates to the California terminals was removed by an increase in the rate from Sand Springs. In asking for a reduction in the rates in effect prior to June 10, 1915, the manufacturers at Muncie, Wheeling, and Washington stated that they were disturbed by the possibility of the establishment of a competing plant at Glassboro, N. J., from which point the rate to New York is 12.6 cents.

It is evident, moreover, that the defendants themselves are not in accord as to the rate relationship. The answer of the St. Louis & San Francisco and its receivers denies that the rates are unreasonable, unjustly discriminatory, or unduly preferential, but avers that—

These defendants believe that the relative rates prevailing from Sand Springs, Okla., and from producing points east of the Indiana-Illinois state line, on glass fruit jars, fruit jar tops and fastenings, and jelly glasses, in carload lots, prior to June 10, 1915, were in all respects just and reasonable; that these defendants were not parties to any transaction or proceeding resulting in the change under which the rates from Sand Springs, Okla., and points east of the Indiana-Illinois state line were made the same, but merely accepted the rates established by their connections.

The answer of the St. Louis & San Francisco is adopted as the answer of the Chicago & North Western. The answer of the Chicago, Milwaukee & St. Paul does not admit or deny the material allegations of the complaint, but avers that it did not determine or fix the rates in issue, and leaves the defense of the case to the railway companies which fixed the rates. While the answer of the Northern Pacific denies generally the material allegations of the complaint, the evidence of record indicates that that line endeavored to maintain the relation of rates existing prior to the reduction in the rates from Muncie, Wheeling, and Washington.

Complainants' evidence that the rates from Sand Springs are unreasonable *per se* consists largely of comparisons with those from Muncie and Washington, and the earnings which they yield. This evidence appears in part in the foregoing table. But the rates from Muncie and Washington are admittedly low.

The effect of the present adjustment is to place widely separated competitors on a parity of rates to Pacific coast markets, despite the disparity in transportation service and the advantage in location of Sand Springs on this westbound traffic. The record shows that this was brought about not because of transportation considerations, but largely through the desire of the eastern manufacturers to better their competitive conditions and to discourage additional competition from new industries.

We are unable to find from this record that the rates from Sand Springs are unreasonable *per se*.

We are of opinion, and find that under the facts here disclosed, the relation of rates is unduly prejudicial to complainants and unduly preferential of their competitors at Muncie, Wheeling, and Washington. The record does not disclose that the former differential of 10 cents would be unreasonable. No order will be entered at the present time but defendants will be expected to readjust their rates in accordance with the views here expressed within 60 days from the service of this report, failing which the matter may again be brought to our attention for appropriate action.

No. 8243.
WILLIAM B. LUKENS LUMBER COMPANY
v.
ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

Submitted March 13, 1916. Decided June 29, 1916.

Reparation awarded on account of unreasonable charges collected for the transportation of a carload of lumber from Jacksonville, Fla., to North Wales, Pa.

B. E. Lukens for complainant.

Edward H. Hart for Atlantic Coast Line Railroad Company; Richmond, Fredericksburg & Potomac Railroad Company; and Washington Southern Railway Company.

C. T. Wolfe for Philadelphia & Reading Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the wholesale lumber business, with its principal office at Philadelphia, Pa. By complaint, filed August 10, 1915, it alleges that the rate charged by defendants for the transportation of a carload of lumber from Jacksonville, Fla., to North Wales, Pa., was unreasonable and unjustly discriminatory. Reparation is asked.

The shipment weighed 44,800 pounds and was forwarded over defendants' lines September 8, 1914. Charges were collected in the sum of \$129.92, at a joint rate of 29 cents per 100 pounds. Complainant contends that the rate should not have exceeded 27 cents per 100 pounds.

The customary method of constructing through rates on lumber from Jacksonville to points in the east has been to add to the southern lines' proportional of 14 cents to the Virginia gateways a specific of 13 cents authorized by the Pennsylvania Railroad and connections beyond. This manner of making rates has been practiced for several years and is well known. The rate assailed was not made on this basis. Defendants admit that the publication of a joint rate that was higher than the rate which this basis would have given was an error, but insist that the rate charged was not unreasonable. Exhibits filed in support of this contention show rates and ton-mile earnings from Jacksonville and other points in the south to North Wales and

other Pennsylvania destinations, together with ton-mile earnings of lines handling similar traffic from Jacksonville to the Virginia gateways.

A joint rate of 27 cents per 100 pounds, constructed on the usual basis, applied when the shipment moved by other routes from and to the points involved, which rate has also applied since February 10, 1915, by the route of movement.

Following *Dare Lumber Co. v. N. S. R. R. Co.*, 38 I. C. C., 507, we find that the rate assailed was unreasonable to the extent that it exceeded 27 cents per 100 pounds, which we find to be reasonable; that complainant made the shipment as herein described and paid and bore charges thereon at the rate herein found to have been unreasonable; that it has been damaged to the extent that the charges paid exceeded the charges which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$8.96, with interest from September 16, 1914. An order awarding reparation will be entered, but as the rate herein found reasonable has been in effect for more than a year no order will be entered for the future.

40 I. C. C.

No. 6579.

DELAWARE & HUDSON BOAT LINES.

Submitted April 14, 1916. Decided June 22, 1916.

The Delaware & Hudson Company to the extent described and at the points named does or may compete with the steamers of the Lake Champlain Transportation Company and of the Lake George Steamboat Company within the meaning of the act. The service of the two lake lines, however, is in the interest of the public and is of advantage to the convenience and commerce of the people. Its continuance will neither exclude, prevent, nor reduce competition on the water routes in question and should be permitted.

Walter C. Noyes and Lewis E. Carr for Delaware & Hudson Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The Delaware & Hudson Company operates a railroad between Rouses Point, in the state of New York, and Wilkes-Barre, in the state of Pennsylvania, and has several branch lines leading into the Adirondack Mountains and elsewhere. It controls the Champlain Transportation Company through the ownership of practically all its capital stock, and indirectly controls the Lake George Steamboat Company, the former, as its name indicates, maintaining a water service on Lake Champlain and the latter a water service on Lake George. Lake Champlain is about 120 miles in length, north and south, and 14 miles broad in its widest part; the boundary line between the states of New York and Vermont runs through it. Lake George lies wholly within the state of New York and is about 35 miles long, its greatest width being about 3 miles. Although only about 5 miles distant from Lake Champlain, the level of Lake George is 96 feet higher and navigation between the two lakes is not practicable.

The Delaware & Hudson Company, incorporated in the state of New York in 1823 under the name of the President, Managers & Company of the Delaware & Hudson Canal Company, built a canal many years ago from Honesdale, in the state of Pennsylvania, to Rondout, on the Hudson River, which it operated until 1899, more especially in the transportation of anthracite coal. During the latter year the original canal company was authorized by an act of the state legislature to assume its present name, and under the authority

of the same statute it later sold the canal. By a previous statute, approved in 1867, it had been authorized to construct, own, maintain, lease, and operate railroads and was given the rights ordinarily enjoyed by railroad companies.

The history of the construction of various portions of the railroad now known as the Delaware & Hudson is spread rather fully upon the record. Of these details it will suffice at this point, however, to say that the Rensselaer & Saratoga Railroad Company, prior to 1871 and by various steps explained of record, had acquired a railroad running from Saratoga Springs to Whitehall, which is at the southern end of Lake Champlain and is the head of navigation on the lake. It had also acquired 1,909 of the 3,000 outstanding shares of the capital stock of the Champlain Transportation Company and in that way controlled it. On May 1 of that year the railroads owned and leased by the Rensselaer & Saratoga Railroad Company, together with its 1,909 shares of the stock of the transportation company, were leased by it to the Delaware & Hudson which was then still using its original corporate name. The lease is practically perpetual. At a later date the Delaware & Hudson Company acquired all the remaining shares of the capital stock of the transportation company except 50 shares retained in the latter's treasury. The important point to be noted in the relations that existed between the Rensselaer & Saratoga and the Champlain Transportation Company is that the steamers of the latter company formed a mere water line extension of the rail line of the former ending at Whitehall. Originally this was also the relation of the transportation company to its new owner; for in 1871, when the Delaware & Hudson acquired the Rensselaer & Saratoga, together with the control of the transportation company, no railroad had been built north of Whitehall along the west shores of Lake Champlain. The authority for the construction of such a road was not granted by the state of New York until 1872, after which date the road was actually built to Rouses Point by certain railroad corporations that were later merged with the Delaware & Hudson. That extension completed the last link in the petitioner's rail line from Albany to the Canadian border. At this time, therefore, from Montcalm Landing at Plattsburg, a distance of 67 miles by rail and 81 miles by water, when the steamer makes all the landings on either side of the lake, the petitioner's rail service substantially parallels the water service of its subsidiary boat line.

CHAMPLAIN TRANSPORTATION COMPANY.

This boat line was incorporated under the laws of the state of Vermont in 1826, and shortly thereafter it commenced, and now continues, to operate boats on Lake Champlain. It now operates

three steamers—the *Vermont*, with a gross tonnage of 1,195 tons and a capacity for 1,500 passengers; the *Ticonderoga*, of 892 gross tons and a capacity for 1,200 passengers; the *Chateaugay*, having a gross tonnage of 742 tons and a capacity for 1,000 passengers. All three boats are said to be too large to permit their passage out of the lake by the canal into other domestic waters, in case the petitioner is not permitted longer to own and operate them and is unable to find a purchaser who will continue the lake service. They are primarily engaged in the transportation of passengers, of whom a very large proportion are summer tourists. The gross earnings of the company in 1915 amounted to \$123,172.48, of which but \$17,300.17 was derived from freight. Of the latter sum \$6,558.50 was earned in the transportation of automobiles accompanied by their owners; so that the company's gross earnings on merchandise and other ordinary freight aggregated for that year only a little over \$10,000. An exhibit introduced in evidence by the petitioner tends to show that the transportation company made net earnings on the cost of the property used in its service of less than 3 per cent in 1909 and of slightly over 3 per cent in 1910; in 1911 the net earnings were almost 5 per cent, and in 1912 a little over 6 per cent; in 1913 the net earnings were but slightly in excess of 2 per cent; and in 1914 there were no net earnings at all. It should be added that the lake is almost invariably frozen over during the winter and that the usual season for navigation extends from the middle of April to the middle of December. A full service is operated only during the months of June, July, and August.

As heretofore stated, Whitehall, at the south end of Lake Champlain, is the real head of navigation on the lake; it was the terminus of the lake service of the Champlain Transportation Company until 1874. When in that year, however, the rail line of the petitioner was completed to Montcalm Landing, some 23 miles north of Whitehall, Montcalm Landing became the southern terminus of the transportation company. On the west side of the lake its steamers touch at Port Henry, Westport, Essex, Port Kent, Valcour, Bluff Point, Cliff Haven, and Plattsburg, the latter being its most northerly landing on the New York side. The rails of the petitioner reach the boat docks only at Plattsburg, and at the other points, except at Port Kent, the tracks of the petitioner are some distance from the lake shore. On the east side of the lake the steamers make landings at Larrabee's, Basin Harbor, Kimball's, Thompson's Point, Cedar Beach, Burlington, and St. Albans. At Burlington and St. Albans only are the landings on the east shore near the rails of the carriers on that side of the lake, and at those points there is no actual switch track connection.

The freight rates of the transportation company on local traffic, between points on the west side of the lake that are reached by the petitioner's railroad, are lower, generally speaking, than the petitioner's rail rates. During 1915 the petitioner's freight traffic by rail between these points amounted to but 1,286 tons and earned but \$1,880.89, while the freight carried by the transportation company between those points during the same period was practically negligible, having amounted to but 118 tons, upon which the earnings were only \$260.38. The transportation company's passenger fares, between points on the west side of the lake that are served also by the petitioner's rails, are substantially the same as the petitioner's rail fares, and the mileage books issued by the Delaware & Hudson may be used interchangeably on the steamers of the transportation company. The earnings of the petitioner on its passenger traffic by rail between those points in July and August, 1915, aggregated \$1,860.20, while the passenger earnings of the transportation company during the same period for its lake service between those points amounted to \$3,868.51.

The region surrounding Lake Champlain is not thickly settled and the only centers of any size are Burlington, on the east shore, with a population of 21,000 persons, and Plattsburg, on the west shore, with 12,000 inhabitants. The petitioner's freight traffic to and from points on the lake is relatively small. The transportation company carries some through freight to points on the east shore and also gets some through freight from those points. There is also a little local traffic across the lake from one port to another. But quite an extensive tonnage of bulky freight moves through the lake in either direction. Northbound it consists largely of coal, some of which is brought to Whitehall by rail and there transferred to canal boats and barges, which are towed to the north by tugboats. The southbound freight is largely confined to pulp wood, timber, lumber, and wood pulp, and it moves through the lake in the same way, a part of it being transferred into cars at Whitehall for further movement to points not reached by the canal. The boats of the Champlain Transportation Company, being primarily passenger steamers, are not well equipped for carrying coal, pulp wood, and similar heavy freight that moves in bulk. The Lake Champlain Transportation Company, which is not affiliated either with the petitioner or the Champlain Transportation Company, controls all this through traffic.

By means of the transportation company's steamers the Delaware & Hudson competes to some extent with the Rutland and Central Vermont railroads on the east side of Lake Champlain. The record shows that neither of these lines has asked for through routes and joint rates with the transportation company. Respon-

sible officials of the petitioner testified at the hearing, however, that should either of them ask for through routes and joint rates, in connection with the steamers of the transportation company, it would be the policy of the petitioner to enter into such arrangements on a reasonable basis. The record shows, in fact, that during the summer season round-trip tickets sold by the Delaware & Hudson permit the traveler to take the trip through Lake Champlain, and also through Lake George if he so desires, returning by one of the competing lines on the east shore of the lake; on the other hand the latter lines sell round-trip tickets which include a journey through the lakes and over the Delaware & Hudson.

The freight handled by the three steamers of the transportation company between and to and from points reached by the petitioner's rails is so small in volume, as heretofore explained, that it may fairly be regarded as negligible. The same may be said with respect to their freight traffic from port to port. So far as any movement to and from points not reached by the petitioner's rails is concerned the transportation company is a mere feeder of the petitioner's rail line. Considered by itself and wholly apart from the effect of its operations upon the freight and passenger earnings of the petitioner's rail line, the transportation company has not been successful financially and was operated last year at a loss. The record shows also that both the Maine Central and the Central Vermont at one time undertook to operate similar boat lines on Lake Champlain, but abandoned the enterprise because it proved unremunerative in each instance.

From this brief recital of the facts as they are shown of record it is apparent that the freight traffic of the Champlain Transportation Company and its port to port passenger traffic are purely incidental to its real relation to the petitioner, which is to provide an alternative route for summer tourists traveling over the petitioner's rail line. The transportation company's steamers are simply a means by which the petitioner is able to enlarge its passenger traffic between New York and Montreal and the intermediate points. Through its ownership of the transportation company the petitioner is enabled also more actively to compete for this traffic as against the rail lines operating on the east shore of Lake Champlain. North of Whitehall, and indeed north of Albany, the petitioner's freight traffic is relatively thin and its revenues relatively small. Being in control of the transportation company, and thus in a position to offer travelers an unusually attractive alternative route, the Delaware & Hudson has been able successfully to advertise its line as a scenic route and has thus augmented its earnings and increased its popularity among travelers. Lake Champlain

and its picturesque shores, together with the Green Mountains on the east and the Adirondacks on the west, make a strong appeal to sight-seers. A large part of the petitioner's passenger traffic north of Whitehall consists of tourists, and the alternative route through Lake Champlain undoubtedly contributes very materially to the volume of this traffic. The petitioner's rail line is made further attractive to tourists by the fact that in addition to the alternative route through Lake Champlain they may also pass through Lake George, another water service controlled by the petitioner, as heretofore stated.

LAKE GEORGE STEAMBOAT COMPANY.

This company was incorporated under the general laws of the state of New York in May, 1872, and commenced shortly thereafter to operate boats on Lake George. At this time it has three steamers, the *Horicon*, with a gross tonnage of approximately 900 tons and a capacity for 1,500 passengers; the *Sagamore*, with a gross tonnage of approximately 875 tons and a capacity for 1,200 passengers; and the *Mohican*, of about 400 tons burden and with a capacity for 400 passengers. All the capital stock of the company is owned by the Champlain Transportation Company; it was acquired by the latter company under both special and general legislation by the state of Vermont. Its gross earnings during the year 1915 are shown by an exhibit of record to have been \$105,465.96, of which only \$10,520.55 accrued upon freight traffic; of the latter amount, \$3,412 was derived from the transportation of automobiles accompanied by their owners, leaving total earnings for the carriage of merchandise and ordinary freight of only \$7,108.55. Other exhibits introduced of record tend to show that except in 1910, when the company's net earnings on the cost of its property used in the Lake George service were barely in excess of 3 per cent, the net earnings for six or seven years have ranged from 6.69 per cent in 1913 to 10.09 per cent in 1909.

In 1871, when the Rensselaer & Saratoga was leased to the Delaware & Hudson, as before explained, no railroads reached Lake George; but in 1882 the petitioner extended a branch to Caldwell, at the southern end of the lake, now known as the village of Lake George. In 1875 a short branch was extended from Montcalm Landing to Baldwin, at the north end of the lake. At this point the petitioner has a station and the steamboat company a dock, but there is no surrounding community except the homes of the employees of both companies. It is designated as a station only because the petitioner and its subsidiary boat line there interchange traffic. Like the shores of Lake Champlain, the region around Lake George is

largely given over to summer residences. The summer schedule of the boat line is in effect from June 20 to September 10, although the boats are in operation from May 1 to November 1. Lake George is the only village on the lake and no other point on its shores, except Baldwin, is reached by rail.

COMPETITION BETWEEN THE PETITIONER'S RAIL LINE AND ITS SUBSIDIARY
WATER LINES.

The record shows that no freight moves between the village of Lake George at the south end and Baldwin, which, as heretofore explained, is a mere interchange station at the north end of Lake George; but even if there were any traffic between those points the rail route, over the petitioner's main line and its two branch lines, would be too circuitous to be used during the period of open navigation on that lake. Nor can there be any competition between the petitioner and its Lake George boat line for the small amount of traffic moving to and from points on the shore of the lake, which, as just stated, are not reached by the petitioner's rails. While it may be possible to assert that the boat line may compete with the petitioner's rail line for through freight moving between points north and south of Lake George, such competition does not exist in fact and may not reasonably be said even to be potential, for the two transfers, one from the car to the boat and the other from the boat to the car, would make that route impracticable. With respect to the passenger traffic to points on the lake, the service of the Lake George Steamboat Company is a mere extension of the petitioner's rail line that ends at Lake George village. So far as the through passenger traffic is concerned the boats of the Lake George Steamboat Company, like the steamers of the transportation company on Lake Champlain, simply provide an alternative route which is used by the petitioner to advertise its rail line as a scenic route, thus increasing its passenger traffic and augmenting its earnings.

The Delaware & Hudson controls and operates a large modern hotel at Bluff Point, on Lake Champlain, near Plattsburg. It also indirectly owns and controls the Fort William Henry Hotel at the south end of Lake George. Neither of these enterprises, considered separately and apart from their indirect result upon the general earnings of the petitioner, has been successful. The former involves a very substantial investment, and for some years has been run at a loss, although for the year 1915 there was a surplus of \$278, after the payment of interest and taxes, due doubtless to the fact that the Plattsburg military training camp of that year was located only a short distance from the hotel property and attracted to the hotel an

unusually large number of summer visitors. The Fort William Henry Hotel on Lake George has also been kept open at a loss. The hotels and the water services on the two lakes are made as attractive and convenient as possible. The steamer *Vermont*, on Lake Champlain, offers staterooms to southbound passengers wishing to make the journey through the lake by day, so that they may pass the night on the boat at Plattsburg, instead of being compelled to use the local hotels. The steamers on the two lakes closely connect with one another by means of a transfer train and also with the petitioner's general passenger service. The two hotels and the Champlain Transportation Company, although, as before stated, unremunerative, or practically so, when considered as separate investments, have nevertheless contributed to the petitioner's efforts to build up its passenger traffic by developing the regions surrounding the two lakes as resorts for a large summer population. The Lake George Steamboat Company makes better earnings than the Champlain Transportation Company, but, as the record shows, it is in no real or substantial sense a competitor of the petitioner.

Upon a careful consideration of the whole record we have reached the conclusion, and so find, that while the petitioner to the extent described, and at the points named, does or may compete for traffic with the steamers of the Champlain Transportation Company and the Lake George Steamboat Company, the services on both lakes are nevertheless operated in the interest of the public, and that, so long as there is no material departure from their present practices, their continued operation will be of advantage to the convenience and commerce of the people. We further find that their continued operation by the petitioner will neither exclude, prevent, nor reduce competition on the routes by water under consideration.

During the course of the hearing some reference was made to certain apparent irregularities, under a tariff of local rates on miscellaneous commodities moving between landings on Lake George, which seemed to have involved a preference, through a number of years, of four individual shippers. It was stated at the hearing that this matter would promptly be corrected by the petitioner. It is expected that this will be done, and that in all other particulars the rules and practices of both boat lines will be brought into conformity with the requirements of the law and the regulations of the Commission.

At the hearing it appeared that, although the Delaware & Hudson Company in its application had included the Lake George Steamboat Company, and through competent witnesses had fully described of record both the operations and the relations of the boat company to the petitioner, doubts were nevertheless entertained by the petitioner's

officials as to the jurisdiction of the Commission over that water service, Lake George being wholly within the state of New York. The facts disclosed of record make it so obvious, however, that the steamboat company is engaged in interstate commerce as to make it unnecessary to enter upon any discussion of that question. Under the terms of the Panama Canal act no room is left for any controversy on the question.

An appropriate order will be entered to give effect to these conclusions.

INVESTIGATION AND SUSPENSION DOCKET No. 767.
HIDES FROM SPRINGFIELD, OHIO.

Submitted April 20, 1916. Decided June 22, 1916.

Proposed increased rates on green salted hides in carloads from Springfield, Ohio, to Chicago, Ill., and Milwaukee, Wis., found not justified and suspended tariffs required to be canceled.

J. T. Johnston for Pittsburgh, Cleveland, Chicago & St. Louis Railway Company and Detroit, Toledo & Ironton Railroad Company.

W. T. Stevenson for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

Guy L. Cory for protestants.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

By schedules filed to take effect January 1, 1916, respondents proposed to cancel their present commodity rates on green salted hides in carloads from Springfield, Ohio, to Chicago, Ill., and Milwaukee, Wis., thereby rendering applicable higher class rates. Upon protest by the American Hide & Leather Company, of New York, and the H. V. Bretney Company, of Springfield, Ohio, the schedules were suspended until April 30, 1916, and later until October 30, 1916.

Commodity rates on green salted hides of 12 cents per 100 pounds from Springfield to Chicago and 14 cents from Springfield to Milwaukee were first established in 1912. Effective October 26, 1914, these rates were increased 5 per cent to 12.6 cents and 14.7 cents, respectively. The schedules under suspension proposed an increase

of 2.1 cents per 100 pounds by the cancellation of the commodity rates and the application of the fifth-class basis. The fifth-class rates applicable from Springfield are 14.7 cents to Chicago and 16.8 cents to Milwaukee. The present commodity rates from Springfield are the same as those from Dayton and Cincinnati, Ohio, to the points named.

Protestants contend that as no change is proposed in the rates from Dayton and Cincinnati the cancellation of the commodity rates from Springfield will subject Springfield and themselves to unjust discrimination, that it will unduly prefer competing shippers and localities in the same general territory, and that it will result in rates that are intrinsically unreasonable. Respondents reply that the movement from Springfield has been light and that Springfield is beyond the territory ordinarily taking as maximum rates what is known as the Chicago-Ohio River adjustment which normally applies only as far east as the rails of the direct line from Cincinnati to Chicago and includes among other points Evansville, New Albany, Jeffersonville, and Madison, Ind., and Cincinnati and Dayton, Ohio. Commodity rates apply from all these points to Chicago and Milwaukee which are lower than the class rates. It is contended that the rates from Springfield are below the normal basis and constitute a menace to the adjustment from points immediately east, such as Columbus, Ohio, from which traffic moves in greater volume. Dayton, on the line of the Cincinnati, Hamilton & Dayton Railroad, is said properly to be included within the influence of the adjustment.

Respondents' testimony is confined chiefly to the so-called Chicago-Ohio River adjustment. It is explained that many years ago a committee composed of representatives of roads handling business from Chicago to Ohio River crossings or related territory inaugurated the adjustment with the view to harmonizing conflicting interests and rate bases of western, southern, and central freight association roads. A variance between the rates applicable within the territory affected by the adjustment and central freight association territory generally resulted.

Chicago and Milwaukee, including territory immediately contiguous, are the largest hide markets in the country. Only seven cars of green salted hides were shipped to these points from Springfield during the years 1914 and 1915, but it appears that during this period and prior thereto the leather business was stagnant, owing to the fact that shoe factories were closed, that large quantities of foreign hides were imported, and that the harness business had been adversely affected by the automobile industry. The leather market is now decidedly active, shoe factories are operating to capacity, and foreign buying has stimulated a demand for harness. In protestants' opinion a further increase in the volume of traffic to Chicago, Milwaukee,

and points to which rates are made on combination thereon is likely and it appears that between January 1, 1916, and April 20, 1916, five cars of hides were shipped from Springfield to Chicago and Milwaukee. The carload minimum on green salted hides is 36,000 pounds, but in most instances cars are loaded heavier. Out of 21 cars moved from Springfield to Chicago, Milwaukee, and points beyond during the period between November 20, 1912, and March 14, 1916, only two cars were billed at the minimum weight. The average loading was 8,386 pounds in excess of the established minimum.

The eastbound commodity rate from Chicago to Springfield, under which there has been some movement, is the same as the westbound rate now sought to be canceled. An increase proposed by respondents in the eastbound rate was suspended in *Eastern Live Stock Case*, 36 I. C. C., 675. Respondents state that the rates on hides were erroneously consolidated in the case cited with the proposed changes in rates on live stock and packing-house products and that it is their purpose to present their views again by a new proposal to cancel the rate referred to and to restore the classification basis.

The short-line mileages to Chicago are 270 miles from Springfield, 266 miles from Dayton, and 284 miles from Cincinnati. Springfield is on the Dayton basis with respect to class rates to Chicago and Milwaukee. It has been included in the adjustment referred to for several years and no convincing reason appears for excluding it. The present rates are not shown to be unremunerative.

We find that respondents have not justified the increased rates proposed, and the suspended tariffs will be ordered canceled.

40 I. C. C.

No. 7657.
JOHN YOUNG ET AL.
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY
ET AL.

PORTION OF FOURTH SECTION APPLICATION No. 553.

Submitted March 8, 1915. Decided June 22, 1916.

1. Rates charged by defendants for the transportation of various commodities from points in Michigan, Tennessee, Indiana, and Illinois to La Moure and Berlin, N. Dak., not shown to have been unreasonable. Complaint dismissed.
2. Authority to continue class rates from Chicago, Ill., and Burlington, Iowa, to Edgeley, N. Dak., which are lower than those contemporaneously applicable from Chicago and Burlington to La Moure and Berlin, N. Dak., and other intermediate points, denied.

Oscar Covert for complainants.

W. E. Alair for Northern Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are individuals and copartnerships engaged in business in La Moure and Berlin, N. Dak. By complaint, filed January 12, 1915, they allege that the rates charged by defendants for the transportation of certain articles from Detroit, Mich., Nashville, Tenn., Richmond, Ind., Chicago, West Pullman, and Joliet, Ill., to La Moure and Berlin since June, 1913, were and are unjust and unreasonable to the extent that they exceeded and exceed the rates contemporaneously applicable on like traffic to Edgeley, N. Dak., a more distant point, to which La Moure and Berlin are directly intermediate. Reparation is asked and the establishment of reasonable rates for the future. The Northern Pacific Railway assumed the defense, and will hereafter be referred to as defendant.

La Moure and Berlin are local stations on the Fargo & Southwestern division of defendant's line, 22 miles and 12 miles, respectively, east of Edgeley, and 330 miles and 340 miles, respectively, west of St. Paul, Minn., the eastern terminus of defendant's line.

Edgeley is also reached by the Chicago, Milwaukee & St. Paul Railway. No joint through rates apply from the points of origin involved to La Moure or Berlin, and the rates applicable are as follows: From Chicago, the sums of the intermediate class rates to and from Minnesota Transfer, Minn.; from the other points the rates to Chicago or Burlington, Iowa, plus combination class rates beyond based on Minnesota Transfer. The rates applicable up to Chicago and Burlington are not attacked.

The class rates from Chicago and Burlington to La Moure and their components are as follows:

From—	To—	1	2	3	4	5	A
Chicago.....	} Minnesota Transfer.....	60	50	40	25	20	25
Burlington.....		81	69	53	41	32	32
Minnesota Transfer.....	La Moure.....						
Total.....	.....	141	119	93	66	52	57

The class rates from Chicago and Burlington to Berlin are 1 cent per 100 pounds higher than the rates to La Moure, except that the fourth-class rates are the same to both points. The joint through class rates from Chicago and Burlington to Edgeley, in cents per 100 pounds, are:

	1	2	3	4	5	A
Chicago.....	127	104	85	62	48	51
Burlington.....	104	90	67	49	37	41

That portion of Fourth Section Application No. 553 filed by the Northern Pacific Railway in which authority is sought for the continuance of lower rates from Chicago and Burlington to Edgeley than to La Moure and Berlin, and other intermediate points, was heard with the complaint.

Defendant insists that the rates to La Moure and Berlin are not unreasonable; that the lower rates to Edgeley were established to meet competition; and that the rates from Chicago to Edgeley were established by the Chicago, Milwaukee & St. Paul Railway, which is the direct line. The distance to Edgeley through Minnesota Transfer is 749 miles from Chicago and 704 miles from Burlington. The distance to Edgeley from Chicago over the Chicago, Milwaukee & St. Paul Railway is 766 miles. The short-line distance to Edgeley from Burlington is 702 miles over two lines. Complainants offered no evidence to show that the rates charged were unreasonable, while defendant submitted comparisons with rates for similar distances that indicate the reasonableness of the rates assailed.

The maintenance of lower class rates from Chicago and Burlington by way of defendant's lines to Edgeley than to La Moure, Berlin, and other intermediate points is not justified and the relief asked from the provisions of the fourth section will be denied. Damages can not be awarded on account of these fourth section departures, however, unless some violation of the first or third sections of the act also appears. *Appalachia Lumber Co. v. L. & N. R. R. Co.*, 25 I. C. C., 193.

We find that complainants are not shown to have been damaged and that the rates charged are not shown to have been unreasonable.

Appropriate orders will be entered.

40 I. C. C.

No. 7702.
GALLOWAY COAL COMPANY ET AL.
v.
ALABAMA GREAT SOUTHERN RAILROAD COMPANY
ET AL.

Submitted November 15, 1915. Decided June 22, 1916.

1. Relative adjustment of carload rates on bituminous coal from mines in southern Illinois, western Kentucky, and northwestern Alabama to Memphis and other points in southwestern Tennessee not shown to be unduly prejudicial to mines in northwestern Alabama.
2. Differentials in rates to common markets in favor of certain producing points can be prescribed only when discrimination can be found, and discrimination can be found only where the traffic from those points and from competing points moves all or a part of the way to the common markets over the rails of the same carrier.
3. Relative adjustment of carload rates on coal from the same mines to Mississippi and Louisiana east of the Mississippi River found unduly prejudicial to mines in northwestern Alabama, but adjustment approved in *Bituminous Coal to Mississippi Valley Territory*, 39 I. C. C., 378, found remedial.
4. Long established rate adjustments that accord competing producing districts located at different distances from common markets equal rates will not be disrupted unless substantial justice requires it. The interests of consumers must be considered as well as the interests of producers, and dissatisfied producers deprived of the natural advantage of location must establish actual injury as a result of the discrimination.
5. Divisions of joint rates received by short lines in Mississippi on shipments of coal purchased by them for fuel not shown to be unduly prejudicial to mines in northwestern Alabama.
6. Relative adjustment of carload rates on coal from the same mines to points in southwestern Arkansas, Louisiana west of the Mississippi River, and southeastern Texas not shown to be unduly prejudicial to mines in northwestern Alabama.

William A. Glasgow, jr., for complainants.

A. P. Humburg and *R. V. Fletcher* for Illinois Central Railroad Company.

William A. Northcutt for Louisville & Nashville Railroad Company.

Thomas Bond for St. Louis & San Francisco Railroad Company.

Claudian B. Northrop and *Alex M. Bull* for Alabama Great Southern Railroad Company, Northern Alabama Railway Company, and Southern Railway Company.

C. T. Prince for Mobile & Ohio Railroad Company.

C. C. P. Rausch for Missouri Pacific Railway Company; St. Louis, Iron Mountain & Southern Railway Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Gulf, Colorado & Santa Fe Railway Company; and Texas & Pacific Railway Company.

Cassoday, Butler, Lamb & Foster for Southern Illinois Coal Operators' Association, intervener.

R. W. Ropiequet and *W. A. Wickliffe* for Ohio Valley Coal Operators' Association, intervener.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

Complainants mine coal in northwestern Alabama, which they endeavor to market in part in the lower Mississippi Valley and eastern Texas in competition with coal mined in western Kentucky and southern Illinois. The mines in Alabama are considerably nearer to the destination territory involved than the mines in western Kentucky and southern Illinois, but are not accorded lower rates on coal to all points than those from the other regions referred to. Equal rates apply from all three producing fields to many points, while many other points take higher rates from Alabama than from western Kentucky or southern Illinois. Complainants allege that this adjustment unreasonably ignores the advantageous location of the Alabama operators and unduly prefers operators in western Kentucky and southern Illinois. Substantially lower rates are asked for Alabama mines to all of the points involved. Operators' associations in western Kentucky and southern Illinois intervened in opposition to the complaint. The principal westbound carriers from Alabama desire to accord Alabama mines a more favorable relative adjustment as between said mines and mines in western Kentucky and southern Illinois, and the carriers serving the latter fields have assumed the defense of the existing relationship between producing regions.

The southern Illinois field comprises mines in the general vicinity of Herrin and Du Quoin, Ill., and for southbound coal traffic is served by the Illinois Central Railroad, the St. Louis, Iron Mountain & Southern Railway, the Chicago & Eastern Illinois Railroad, and to some extent by the Mobile & Ohio Railroad. The western Kentucky field extends south from the Ohio River in the vicinity of Henderson and Owensboro, Ky., nearly to Hopkinsville and Russellville, Ky., and is served by the Illinois Central and the Louisville & Nashville railroads. The Alabama field is located in the general vicinity of Birmingham and is served by the St. Louis & San Francisco Railroad, the Southern Railway and its subsidiary, the Northern Alabama Railway, the Alabama Great Southern Railroad, and the Louisville & Nashville, the Illinois Central, and the Mobile & Ohio railroads.

The carriers from southern Illinois severally group all of the mines which they serve in that field into a single group. The Illinois Central maintains two groups in western Kentucky, but on traffic to the destination points involved, hereinafter referred to generally as the lower Mississippi Valley, applies the same rates from both. All mines served by the Louisville & Nashville in western Kentucky also have the same rates to all points in the lower Mississippi Valley to which the Louisville & Nashville maintains or participates in rates. The Louisville & Nashville maintains three groups in Alabama; the St. Louis & San Francisco, three groups; the Southern, nine groups, including the groups maintained by the Northern Alabama and the Alabama Great Southern. The Mobile & Ohio and the Illinois Central each maintain a single group, the Illinois Central's group and one of the St. Louis & San Francisco groups being identical. The St. Louis & San Francisco and the Southern apply different rates from their different groups to many points, the higher rates being differentials of 5 cents or 10 cents per ton higher than the base rates. By base rates are meant the lowest rates from the Alabama field to points in the territory involved. St. Louis & San Francisco group 2 and Southern group 4 take the base rates to all points in the destination territory. Complainants' mines are located principally in these two groups, but one mine is in St. Louis & San Francisco group 1 and one other in Southern group 5, which latter is also served by the Louisville & Nashville. The complaint states specifically, however, that the relative adjustment of rates on coal from the various groups of mines entirely within Alabama is not attacked; only the relative adjustment of rates from the Alabama field as a whole in comparison with the rates from the western Kentucky and southern Illinois fields.

The destination points involved are located in southwestern Tennessee, Mississippi and Louisiana, southeastern Arkansas, and southeastern Texas.

We shall consider, in the order named, the rates to southwestern Tennessee, the rates to Mississippi and Louisiana east of the Mississippi River, and the rates to southeastern Arkansas, Louisiana west of the Mississippi River, and southeastern Texas.

SOUTHWESTERN TENNESSEE.

Memphis affords the principal market for coal in this territory, consuming annually more than 1,000,000 tons, shipped by rail from Illinois, Kentucky, Alabama, and Tennessee, and by water from Pennsylvania and Kentucky. Prior to 1882 nearly all of the coal then consumed at Memphis moved in by water from the Pittsburgh district in Pennsylvania, but in 1882 the Louisville & Nashville began to carry coal to Memphis from western Kentucky at a rate, as nearly as can now be determined, of \$1.70 per ton. This rate was reduced

from time to time and on January 1, 1889, became \$1.40. The Illinois Central began to carry coal from western Kentucky to Memphis in 1885, but its advent does not appear to have affected the rates. The Kansas City, Memphis & Birmingham, now the St. Louis & San Francisco, entered Memphis from Alabama in 1887 and attempted persistently to accord its Alabama mines lower rates than those from the more distant mines in western Kentucky served by the Louisville & Nashville and Illinois Central; but each reduction made by it was met by the other carriers named until, finally, in July, 1901, a rate war occurred. A rate of \$1.25 applied from Alabama, western Kentucky, and southern Illinois when the rate war began, which was soon reduced to 45 cents. On October 26, 1901, the former rate of \$1.25 was reestablished, and was continued in effect from all three fields almost continuously until August 7, 1902, when it was reduced to \$1. The \$1 rate was maintained until April 1, 1911, when it was increased to \$1.10, the rate in effect when the complaint herein was filed. A rate of \$1.25 has since been published as approved in *Coal and Coke Rates in the Southeast*, 35 I. C. C., 187, which rate also applies from many of the mines in Alabama served by the Southern and from the Alabama mines served by the Illinois Central. The Louisville & Nashville publishes no rates from Alabama to Memphis.

The rates maintained to Memphis from all three fields, with average distances over the routes by which the traffic generally moves, are as follows:

From—	Rate.	Route.	Miles.
Southern Illinois:			
I. C.	\$1.25	I. C.	246
St. L., I. M. & S.	1.25	St. L., I. M. & S.	292
C. & E. I.	1.25	C. & E. I. to Chafee, Mo.; St. L. & S. F.	252
M. & O.	(¹)	.....	.....
Western Kentucky:			
I. C.	1.25	I. C.	272
Groups 2 and 3, L. & N. all mines.	1.25	L. & N.	278
Alabama:			
St. L. & S. F.—			
Group 1.	1.35	St. L. & S. F.	225
Group 2.	1.25	.....do.....	196
Group 3, I. C., I. C. group 4.	(¹)	.....	.....
Southern—			
Group 1.	1.25	Southern via Sheffield, Ala.	285
Group 2.	1.35	.....do.....	328
Group 3.	1.25	.....do.....	271
Group 4.	1.25	.....do.....	249
Group 5.	1.35	.....do.....	321
Group 6.	(¹)	.....	.....
Group 11.	1.25	Southern via Sheffield, Ala.	233
Group 12.	1.25	.....do.....	220
Group 13.	1.25	.....do.....	197
I. C. group 4 (Brilliant) ..	1.25	I. C. to Winnfield, Ala.; St. L. & S. F. to Aberdeen, Miss.; I. C. via Durant, Miss.	326
L. & N. groups 1, 2, 3.	(¹)	.....	.....
M. & O.	1.35	M. & O. to Corinth, Miss.; Southern.	301

¹ No rates published to Memphis.

Average of distances stated from—	Miles.
Southern Illinois	263
Western Kentucky	275
Illinois Central, Illinois and Kentucky mines	259
All Alabama mines taking base rate.....	247

Complainants ask a differential of not less than 25 cents per ton in favor of Alabama mines and thus ask us to do for them, because of their alleged advantage in distance, what the St. Louis & San Francisco and the Southern have been unable to do.

Differential adjustments can be prescribed only where unlawful discrimination is found and unlawful discrimination between different producing points competing in a common market can not be found unless the same carrier serves the common market and controls the rates to it from the different producing points, or where the traffic moves a part of the way to the common market over the rails of the same carrier. The only way to establish differentials where entirely independent carriers serve a common market from competing producing points would be to fix maximum rates from some of the producing points and minimum rates from the others, and the latter is not within our authority. *Ashland Fire Brick Co. v. S. Ry. Co.*, 22 I. C. C., 115; *Coke Producers Asso. of Connellsville v. B. & O. R. R. Co.*, 27 I. C. C., 125; *Memphis Freight Bureau v. B. & O. R. R. Co.*, 28 I. C. C., 543.

Coals from complainants' mines do not move any part of the way to Memphis over the rails of the carriers that control the rates from western Kentucky and southern Illinois, the Louisville & Nashville and the Illinois Central. The movement is performed exclusively by the St. Louis & San Francisco and the Southern. The Louisville & Nashville has a line from Alabama to Memphis, but the distance over this line is considerably over 500 miles, and, as stated above, the Louisville & Nashville publishes no rates on coal from Alabama to Memphis. The Illinois Central serves mines at Brilliant, Ala., but Memphis is 326 miles from Brilliant over the only route via which joint rates are applicable: Illinois Central to Winnfield, 8 miles; St. Louis & San Francisco to Aberdeen, 55 miles; Illinois Central beyond, 263 miles. As the traffic moves, the Illinois Central does not discriminate against Brilliant. A shorter route is possible, as follows: Illinois Central to Winnfield, 8 miles; St. Louis & San Francisco beyond, 171 miles. But the complaint does not ask for the establishment of this route. Complainants have no mines at Brilliant and no one is before us who has.

We have repeatedly held that the provisions of the act against unjust discrimination speak to the carriers of the country individually and with respect to those things for which they are individually responsible, and not to the carriers as parts of a single great system. *Chicago Lumber & Coal Co. v. T. S. Ry. Co.*, 16 I. C. C., 323. And we find that there is no unlawful discrimination upon which the differential adjustment asked in the rates to Memphis can be based. No evidence was adduced relative to the rates to other points in southwestern Tennessee and the adjustment asked to these points also must be denied.

MISSISSIPPI AND LOUISIANA EAST OF THE MISSISSIPPI RIVER.

Equal rates have long applied from western Kentucky, southern Illinois, and Alabama mines taking base rates, to practically all local points in this territory on the Illinois Central and Yazoo & Mississippi Valley lines, hereinafter called Illinois Central lines. Equal rates applied for a long time to common points also, but the Southern Railway and its connections desired to accord Alabama mines an advantage of at least 25 cents per ton and finally in 1908 definitely requested the Illinois Central lines to permit such an adjustment. The request was refused, but the following year the Southern reduced its rates to common points 15 cents per ton and the Illinois Central elected not to meet the reduced rates. A differential of 25 cents per ton in favor of Alabama mines had previously been established at New Orleans. Alabama operators have also had an advantage of 15 cents per ton at points on the Mississippi Central west of Brookhaven and at all points on the Gulf & Ship Island Railroad, except at points between Jackson and Arbo, Miss., and at Gulfport, Miss. They have had an advantage of 25 cents at Gulfport, but have been at a disadvantage of 10 cents per ton at points between Jackson and Arbo. They have also been at a slight disadvantage at branch-line points in the general vicinity of McComb, Miss. At nearly all other points, including almost the entire eastern half of Mississippi, Alabama operators have had an advantage ranging from 15 cents per ton to 70 cents.

Certain changes were effected after the complaint herein was filed, as a result of *Coal and Coke Rates in the Southeast, supra*, and *Rates on Bituminous Coal*, 36 I. C. C., 401. In the first of these cases we approved increases of 15 cents per ton from all three of the coal fields here involved to New Orleans and Baton Rouge, La., Greenville, Natchez, and Gulfport, Miss., and to a number of interior junction points. No increases were allowed to Vicksburg, Miss., and certain other points from Alabama, and to other points smaller increases were allowed from Alabama than from western Kentucky and southern Illinois. The Illinois Central and its connections accepted the increases allowed them to such points with the result that Alabama operators got a greater rate advantage at a number of points than they had when the complaint was filed. The rate from Kentucky and Illinois to Jackson, Miss., for example, became 30 cents per ton higher than the base rate from Alabama; the rate to Hattiesburg, Miss., 25 cents higher than the base rate from Alabama instead of 15 cents higher; the rates to points on the Gulf & Ship Island between Jackson and Arbo, 5 cents higher than the base rates from Alabama instead of 10 cents lower. More recently, however, in a supplemental order in the same case, additional in-

creases were authorized from Alabama to certain Mississippi points, including Jackson and Hattiesburg. The rates authorized to Jackson and Hattiesburg are only 15 cents lower than the rates allowed to the same points from western Kentucky and southern Illinois in the order originally entered. In the second case cited we refused to permit higher rates on coal to intermediate points in this territory than to the terminal or junction points to which we refused to allow increases in rates in *Coal and Coke Rates in the Southeast, supra*, or to which we allowed only partial increases. Permission also was refused for the maintenance of lower rates to intermediate points than to Yazoo City, Belzoni, and Silver City, Miss. Lower rates were authorized to Mississippi River and Gulf points than to intermediate points, but with the proviso that the rates to intermediate points should not exceed certain maximum rates which we prescribed in the form of distance scales. The carriers from Kentucky and Illinois were allowed to meet the competition of the direct lines from Alabama at common points. These findings also have been modified in that a general readjustment of the rates on coal from Alabama, southern Illinois, and western Kentucky proposed by the carriers to practically all points in Mississippi and eastern Louisiana has been approved, with a few exceptions unnecessary to detail. Alabama operators get a differential advantage of 30 cents per ton or more at all points except Mississippi River points where water competition is encountered, and certain points in northern and western Mississippi on the Illinois Central lines to which the distances from Alabama are substantially the same as the distances from western Kentucky and southern Illinois. *Bituminous Coal to Mississippi Valley Territory*, 39 I. C. C., 378.

Complainants herein ask an advantage of not less than 25 cents per ton at all points north of the line of the Southern Railway in Mississippi from Columbus, Miss., to Greenville, and a minimum advantage of 40 cents per ton at all points on and south of that line. They assert that they are at a decided disadvantage in the cost of production, and therefore should not be deprived of the full benefit of their more advantageous location. The rates asked are said to be necessary to enable them to do a fair share of the business, a fair share being defined as 50 per cent. Points reached by the Illinois Central lines are the principal points in issue.

The Illinois Central makes the rates to points on its lines from western Kentucky and southern Illinois and participates in the rates maintained to the same points from Alabama. The rates per ton from all three fields to representative points, with distances measured over the shortest routes in which the Illinois Central participates and also over the direct lines from Alabama to common points, are shown on the following page.

To—	Delivering carrier.	From Illinois.		From Kentucky.		St. L. & S. F. groups—	From Alabama.												Average distance from all Alabama mines taking base rate.	Average distance from I. C. Illinois and Kentucky mines.	Difference in average distance in favor of Alabama mines.
		All I. C. mines.		All I. C. mines.			Southern groups—														
		Rate.		Rate.			I. C. groups (Brilliant).														
		Miles.	Miles.	Miles.	Miles.		1	2	1	2	3	4	5	6	11	12					
Clarksdale, Miss.	Y. & M. V.	315	315	341	341	271	271	252	252	279	279	282	282	282	270	328	58				
Grenada, Miss.	I. C.	328	328	354	354	296	296	184	184	211	211	226	226	226	227	341	114				
Winona, Miss.	I. C.; Southern	351	351	377	377	209	209	209	209	236	236	203	203	203	216	364	148				
Greenville, Miss.	Y. & M. V.; Southern	389	389	415	415	346	346	350	350	377	377	388	388	388	354	402	48				
Durant, Miss.	I. C.	381	381	407	407	188	188	244	244	271	271	173	173	173	188	394	206				
Rolling Fork, Miss.	Y. & M. V.	415	415	441	441	372	372	271	271	298	298	297	297	297	304	428	124				
Jackson, Miss.	I. C.; A. & V.	439	439	465	465	247	247	238	238	265	265	225	225	225	254	452	198				
Vicksburg, Miss.	Y. & M. V.; A. & V.	458	458	484	484	415	415	282	282	314	314	304	304	304	325	471	146				
Brookhaven, Miss.	I. C.; M. C.	493	493	519	519	301	301	320	320	349	349	279	279	279	314	506	192				
Borcia, Miss.	Y. & M. V.; M. C.	524	524	550	550	334	334	336	336	363	363	312	312	312	332	537	206				
Natchez, Miss.	do.	535	535	561	561	345	345	364	364	391	391	321	321	321	357	548	197				
McComb, Miss.	I. C.	517	517	543	543	325	325	316	316	343	343	303	303	303	323	530	207				
Monticello, Miss.	I. C.; N. O. G. N.	516	516	542	542	301	301	335	335	362	362	302	302	302	328	529	201				
Hammond, La.	I. C.	570	570	596	596	377	377	368	368	395	395	356	356	356	375	583	208				
Baton Rouge, La.	Y. & M. V.; L. R. & N.	604	604	630	630	414	414	433	433	460	460	392	392	392	427	617	190				
New Orleans, La.	I. C.; N. O. N. E.; L. & N.	623	623	649	649	430	430	449	449	476	476	409	409	409	438	686	198				

51. Q. Q

- 1 Former rate.
 2 St. L. & S. F. to Memphis and Y. & M. V.
 3 Southern to Greenwood, Y. & M. V.
 4 Rates following *Coal and Coke Rates in the Southeast*, 35 I. C. C., 187.
 5 St. L. & S. F. to Aberdeen, I. C.
 6 Southern to Winona, I. C.
 7 Southern to Columbus, M. & O. to Starkville, I. C.
 8 Southern.
 9 Southern to Columbus, M. & O. to Starkville, I. C. to Durant, Y. & M. V.
 10 Southern to Elizabeth, Y. & M. V.
 11 Southern to Birmingham, A. G. S. to Meridian, A. & V.
 12 Southern to Bessemer, A. G. S. to Meridian, A. & V.
 13 A. G. S. to Meridian, A. & V.
 14 Southern to Columbus, M. & O. to Starkville, I. C. to Jackson, A. & V.
 15 Southern to Bessemer, A. G. S. to Meridian, A. & V.

- 16 A. G. S. to Meridian, A. & V.
 17 Southern to Birmingham, A. G. & S. and A. & V. to Jackson, I. C.
 18 Southern to Bessemer, A. G. & S. and A. & V. to Jackson, I. C.
 19 From Brilliant, \$1.90.
 20 St. L. & S. F. to Aberdeen, I. C. to Jackson, N. O. G. N.
 21 A. G. S. and A. & V. to Jackson, I. C.
 22 Southern to Birmingham, A. G. S. and A. & V. to Jackson, N. O. G. N.
 23 Southern to Bessemer, A. G. S. and A. & V. to Jackson, N. O. G. N.
 24 A. G. S. and A. & V. to Jackson, N. O. G. N.
 25 Southern to Birmingham, A. G. S. to Meridian, N. O. N. E., to New Orleans, L. R. & N.
 26 Southern to Bessemer, A. G. S. to Meridian, N. O. N. E., to New Orleans, L. R. & N.
 27 Southern to Birmingham, A. G. S. to Meridian, N. O. N. E. to New Orleans.
 28 Southern to Bessemer, A. G. S. to Meridian, N. O. N. E. to New Orleans.
 29 A. G. S. to Meridian, N. O. N. E. to New Orleans.

Alabama mines taking base rates have a substantial advantage in distance, particularly at Jackson and in the territory south of Jackson, even by the routes in which the Illinois Central participates. But other transportation conditions favor western Kentucky and southern Illinois. Only one-line hauls are involved from western Kentucky and southern Illinois, whereas two and three line hauls are involved from Alabama. Much heavier locomotives and trains can be operated over the Illinois Central's main lines from Kentucky and Illinois than over its branch line from Aberdeen, Miss., through Starkville to Durant, over which apparently most of the Alabama coal hauled by the Illinois Central moves. The carriers' assembling costs are about 3 cents per ton less in southern Illinois than in Alabama. These conditions may not entirely counterbalance the shorter distances from Alabama, but, on the other hand, are not to be ignored. Moreover, relative distances alone are not controlling. Commercial competition and the interests of consumers also are pertinent considerations. Consumers may properly have the widest possible market consistent with justice to the carriers, and to that end and also in their own interests carriers may, within reasonable limits, as a matter of traffic policy, accord competing producing centers located at different distances from common centers of consumption identical rates. Carriers may not, of course, disregard all differences in distances. Groups can not be extended indefinitely, and the discrimination inherent in all group adjustments must not be undue. Groups long maintained, however, are presumably fair and are not to be disrupted unless substantial justice clearly requires it. Dissatisfied producers deprived of the benefit of their proximity to common markets must show that they are actually injured and by an unjust and unlawful discrimination. *Imperial Coal Co. v. P. & L. E. R. R. Co.*, 2 I. C. C., 618; *American Coal Co. v. B. & O. R. R. Co.*, 17 I. C. C., 149; *North Fork Cannel Coal Co. v. A. A. R. R. Co.*, 25 I. C. C., 241; *Public Utilities Commission of Idaho v. O. S. L. R. R. Co.*, 33 I. C. C., 103; *Newport Mining Co. v. C. & N. W. Ry. Co.*, 33 I. C. C., 645.

The principal competition in Mississippi and Louisiana east of the Mississippi River is between Alabama operators and operators in western Kentucky. Alabama coals are of better quality on the whole than western Kentucky coals and sell at prices that average about 40 cents per ton more than the average selling price of western Kentucky coals. The selling prices of Alabama coals average about \$1.35 per ton; the prices of Kentucky coals about 97 cents. Complainants assert that they can not reduce their prices much further, if at all, but coal dealers at Memphis who trade in Mississippi state that the superior quality of Alabama coals just about offsets the lower prices at which western Kentucky coals are offered and predict

that the rate adjustment asked would result in the complete displacement of Kentucky coals by coals from Alabama. A large part of the coal offered by western Kentucky operators is a cheap pea and slack coal that apparently sells because it is cheap and because certain consumers have had their plants specially equipped to burn it. The 15-cent differential accorded to Alabama operators at common points in 1909 is shown to have affected western Kentucky operators adversely while the 25-cent differential in favor of Alabama operators at New Orleans has almost excluded western Kentucky operators.

During the year 1914, 66,002 tons of coal were shipped to Mississippi from the entire state of Illinois, while 206,042 tons were shipped from Illinois to Louisiana. The shipments from Alabama during the same period aggregated 1,071,896 tons to Mississippi and 1,602,940 tons to Louisiana, but the tonnage from western Kentucky is not in evidence. The best computations submitted of the relative quantities of coal shipped all rail from all three fields, are as follows:

Destination.	Total annual consump- tion.	Supplied by Ala- bama.	Supplied by Ken- tucky and Illinois.	Alabama percent- age.	Ken- tucky and Illi- nois per- centage.	Alabama rate ad- vantage per ton.
	<i>Tons.</i>	<i>Tons.</i>	<i>Tons.</i>			<i>Cents.</i>
Greenville, Miss.....	{ 43,000 32,900 }	5,400	37,600	12.5	87.5	15
Belzoni, Miss.....	6,000	750	5,250	12.5	87.5	15
Greenwood, Miss.....	21,000	12,560	8,440	59.8	40.2	15
Winona, Miss.....	10,000	200	9,800	2	98	15
Minter City, Miss.....	3,350	40	3,310	1.2	98.8	15
Elizabeth, Miss.....	725	-----	725	-----	100	15
Jackson, Miss.....	51,500	9,000	42,500	17.4	82.6	15
Vicksburg, Miss.....	{ 41,050 20,000 }	24,500	16,550	59.6	40.4	15
Gulfport, Miss.....	32,004	18,590	13,414	58.1	41.9	25
New Orleans, La.....	{ 1,000,000 750,000 }	880,000	120,000	88	12	25

¹ Water-borne coal not included in percentage stated.

Western Kentucky and southern Illinois operators together do about half of the business at Gulfport, although their rate adjustment there is exactly the same as at New Orleans, where they do very little business. Alabama operators, on the other hand, evidently supply about half of the coal consumed at the more important points in the territory involved.

Complainants state that the Alabama coal sold in Mississippi has consisted entirely of the very superior coals mined in the Cahaba district and similar districts and that their sales at Gulf ports are attributable largely to the desirability of Alabama coal for bunker purposes, and to past car shortages and a strike on the Illinois Central. Interveners testify, however, that the Illinois Central's car supply has never been less adequate than the Southern's and attribute the failure of Alabama operators to do more business in Mississippi and eastern Louisiana to their long neglect of the territory and their recourse to it only when the furnaces in Alabama are idle.

Western Kentucky coals can not move north, east, or west without traversing competing coal fields or encountering superior coals from other fields. Memphis and Nashville, Tenn., Evansville, Ind., and the lower Mississippi Valley afford the only extensive market available, outside of Kentucky. Alabama coals have a much larger local market than Kentucky coals and in addition can move east to Georgia and south to the Gulf as well as to Mississippi and eastern Louisiana. The iron furnaces in Alabama consume large quantities of coal and large quantities also are coked. More than 5,000,000 tons of Alabama coal containing over 3,600,000 tons of slack were made into coke during the year 1914. Western Kentucky coal is not a good coking coal and contains a relatively high percentage of slack that is of little value. Alabama operators also find it advantageous to wash their screenings, as the washed coals command prices that compare favorably with the prices brought by their run of mine coal. Complainants produce only small quantities of screenings. The larger lumps are screened out of their run of mine coal for sale as domestic coal and the residue, including what would otherwise constitute pure screenings, is sold to railroads as partial run of mine coal. We found in *Alabama Coal Operators' Assn. v. S. Ry. Co.*, 21 I. C. C., 230, that Alabama operators had a decided rate advantage over their competitors at many points in Georgia, and that the comparatively light tonnage from Alabama mines to Georgia was attributable to recourse by Alabama operators to the Georgia market only when preferred markets were not available. About 1,860,000 tons of coal moved to Georgia from Alabama mines during 1914. The greater desirability of Alabama coals for bunker use will probably hold the steamship trade for Alabama operators at Gulf ports, not to mention the probable effect of the recent opening of the Warrior River from the Alabama coal field to the Gulf.

The total production of coal in tons in the three fields involved, during recent years, has been as follows:

Year.	Alabama.		Western Kentucky.	Southern Illinois. ¹
1907.....	14	54	5,285,397	8,494,712
1908.....	11	93	5,800,120	10,058,803
1909.....	18	50	5,871,385	10,929,578
1910.....	16	62	8,344,295	8,351,151
1911.....	15	21	7,100,541	12,129,000
1912.....	10	00	7,873,328	13,944,006
1913.....	17	22	8,517,640	16,458,490
1914.....	15	22	7,899,596	17,215,415

¹ Franklin, Jackson, Perry, and Williamson counties, Saline county being omitted because none of the coal mined there moved south.

The total production in Alabama during 1913 was about 88 per cent of the total capacity of the entire Alabama field, and most of the increase over 1912 moved to points outside of Alabama. The production in 1914 amounted to about 70 per cent of the potential

output. Interveners argue that these figures show that Alabama operators were highly prosperous, but fail to show definitely at what percentage of capacity their own mines were operated during the same period.

The Southern Railway cites the following differentials in rates on coal, fixed or approved in various cases:

Distance difference.	Rate differential, per ton.	Cases in which considered.
<i>Miles.</i>	<i>Cents.</i>	
22	¹ 25	<i>Consolidated Fuel Co. v. A., T. & S. F. Ry. Co.</i> , 24 I. C. C., 213.
56	15	<i>Alabama Coal Operators' Asso. v. S. Ry. Co.</i> , 21 I. C. C., 230.
90	25	<i>Andy's Ridge Coal Co. v. S. Ry. Co.</i> , 18 I. C. C., 405.
119	² 35	Do.
122	¹ 25	<i>Consolidated Fuel Co. v. A., T. & S. F. Ry. Co.</i> , 24 I. C. C., 213.
130	25	<i>Alabama Coal Operators' Asso. v. S. Ry. Co.</i> , 21 I. C. C., 230.
173	45	Do.
196	70	Do.
200	² 45	<i>Andy's Ridge Coal Co. v. S. Ry. Co.</i> , 18 I. C. C., 405.

¹ Not exceeding. ² At least.

The following differentials might have been added:

Distance difference.	Rate differential, per ton.	Case in which considered.
<i>Miles.</i>	<i>Cents.</i>	
15-20	10.0	<i>Rates from Walsenburg Coal Field</i> , 26 I. C. C., 85.
32	10.0	<i>Monon Coal Co. v. C. & E. I. R. R. Co.</i> , 34 I. C. C., 221.
55	13.5	<i>Imperial Coal Co. v. P. & L. E. R. R. Co.</i> , 2 I. C. C., 618.
90	¹ 25.0	<i>Black Mountain Coal Land Co. v. S. Ry. Co.</i> , 15 I. C. C., 286.
50-100	0	<i>American Coal Co. v. B. & O. R. R. Co.</i> , 17 I. C. C., 149.
200	40.0	<i>The Illinois Coal Cases</i> , 32 I. C. C., 659.
300	70-45-40	Do.

¹ Not exceeding.

These citations only prove, however, that one adjustment is not necessarily determinative of another and that distance is not always controlling.

Alabama operators are entitled to some relief, but not to the extent asked. The adjustment asked, in our opinion, would destroy competition instead of promoting it, by enabling Alabama operators to control the market. We find that the adjustment assailed is unduly prejudicial to Alabama operators in favor of operators in western Kentucky and southern Illinois, and that Alabama mines taking the base rates maintained to Mississippi and Louisiana east of the Mississippi River should have a substantial differential advantage at nearly all points in Mississippi and at all points in eastern Louisiana. The differential adjustment approved in *Bituminous Coal to Mississippi Valley Territory, supra*, is fair to Alabama operators and will remove the discrimination found herein to the extent that it is unlawful.

Complainants also challenge the divisions accorded by the Illinois Central to local lines in Mississippi, alleging that they unduly prefer western Kentucky and southern Illinois operators in the sale of fuel

40 I. C. C.

coal to such local lines. The local lines involved are the Gulf & Ship Island, the Mississippi Central, the New Orleans Great Northern, and the New Orleans, Mobile & Chicago. Complainants assert that the differentials in favor of Alabama mines in the rates to the junction points are nullified by the divisions maintained, and afford Alabama operators no protection in the sale of fuel coal to the local lines named.

The Illinois Central delivers coal to the Gulf & Ship Island at Jackson, destined to Mendenhall or Florence; to the Mississippi Central at Brookhaven or Roxie, destined, it seems, to Hattiesburg; to the New Orleans Great Northern at Jackson, destined to Hopewell or Bogalusa, La.; to the New Orleans, Mobile & Chicago at Ackerman, destined to Reform or High Point. Divisions of the rates in effect to these points when the complaint was filed are in evidence as follows:

Originating carrier.	Delivering carrier.	Destination.	Miles from junction.	Through rate.	Divisions.
I. C. (southern Illinois and western Kentucky)	G. & S. I....	Mendenhall..	1 32	\$1. 85	{ \$1 to I. C. to Jackson; 85 cents to G. & S. I. beyond. 33 cents to Southern to Columbus; 85 cents to G. & S. I. beyond Hattiesburg. 66 cents to Southern to Meridian; \$1.29 to others beyond. 50 cents to Southern to Meridian; \$1.45 to others beyond. \$1.10 to I. C. to Jackson; \$1 to N. O. G. N. beyond. \$1.10 to I. C. to Jackson; \$1.05 to N. O. G. N. beyond. 60 cents to 78 cents to Southern to Meridian; 90 cents to 60 cents to N. O. G. N. beyond Jackson. 30 cents to Southern to Columbus; 90 cents to N. O. G. N. beyond Jackson. 73 cents to Southern to Meridian; \$1.42 to others beyond. 30 cents to Columbus; \$1.15 to N. O. G. N. beyond Jackson; 5 cents to Miss. Cent. beyond 41 cents to Southern to Columbus; 68 cents to others beyond Meridian. 75 cents to Southern to Mathiston; 70 cents to others beyond. 77 cents to Southern to Meridian; 68 cents to others beyond.
Southern (Alabama group 3).		Florence....	1 11		
I. C. (southern Illinois and western Kentucky)	.....do.....	Mendenhall..	2 58	1. 95	{ \$1 to I. C. to Jackson; 85 cents to G. & S. I. beyond. 33 cents to Southern to Columbus; 85 cents to G. & S. I. beyond Hattiesburg. 66 cents to Southern to Meridian; \$1.29 to others beyond. 50 cents to Southern to Meridian; \$1.45 to others beyond. \$1.10 to I. C. to Jackson; \$1 to N. O. G. N. beyond. \$1.10 to I. C. to Jackson; \$1.05 to N. O. G. N. beyond. 60 cents to 78 cents to Southern to Meridian; 90 cents to 60 cents to N. O. G. N. beyond Jackson. 30 cents to Southern to Columbus; 90 cents to N. O. G. N. beyond Jackson. 73 cents to Southern to Meridian; \$1.42 to others beyond. 30 cents to Columbus; \$1.15 to N. O. G. N. beyond Jackson; 5 cents to Miss. Cent. beyond 41 cents to Southern to Columbus; 68 cents to others beyond Meridian. 75 cents to Southern to Mathiston; 70 cents to others beyond. 77 cents to Southern to Meridian; 68 cents to others beyond.
Southern (Alabama group 3).		Florence....	2 79		
I. C. (southern Illinois and western Kentucky)	N. O. G. N..	Hopewell...	1 26	2. 10 2. 15	{ \$1 to I. C. to Jackson; 85 cents to G. & S. I. beyond. 33 cents to Southern to Columbus; 85 cents to G. & S. I. beyond Hattiesburg. 66 cents to Southern to Meridian; \$1.29 to others beyond. 50 cents to Southern to Meridian; \$1.45 to others beyond. \$1.10 to I. C. to Jackson; \$1 to N. O. G. N. beyond. \$1.10 to I. C. to Jackson; \$1.05 to N. O. G. N. beyond. 60 cents to 78 cents to Southern to Meridian; 90 cents to 60 cents to N. O. G. N. beyond Jackson. 30 cents to Southern to Columbus; 90 cents to N. O. G. N. beyond Jackson. 73 cents to Southern to Meridian; \$1.42 to others beyond. 30 cents to Columbus; \$1.15 to N. O. G. N. beyond Jackson; 5 cents to Miss. Cent. beyond 41 cents to Southern to Columbus; 68 cents to others beyond Meridian. 75 cents to Southern to Mathiston; 70 cents to others beyond. 77 cents to Southern to Meridian; 68 cents to others beyond.
Southern (Alabama group 3).		Bogalusa....	1 114		
I. C. (southern Illinois and western Kentucky).	Miss. Cent..	Hattiesburg.	2 83	1. 60	{ \$1 to I. C. to Jackson; 85 cents to G. & S. I. beyond. 33 cents to Southern to Columbus; 85 cents to G. & S. I. beyond Hattiesburg. 66 cents to Southern to Meridian; \$1.29 to others beyond. 50 cents to Southern to Meridian; \$1.45 to others beyond. \$1.10 to I. C. to Jackson; \$1 to N. O. G. N. beyond. \$1.10 to I. C. to Jackson; \$1.05 to N. O. G. N. beyond. 60 cents to 78 cents to Southern to Meridian; 90 cents to 60 cents to N. O. G. N. beyond Jackson. 30 cents to Southern to Columbus; 90 cents to N. O. G. N. beyond Jackson. 73 cents to Southern to Meridian; \$1.42 to others beyond. 30 cents to Columbus; \$1.15 to N. O. G. N. beyond Jackson; 5 cents to Miss. Cent. beyond 41 cents to Southern to Columbus; 68 cents to others beyond Meridian. 75 cents to Southern to Mathiston; 70 cents to others beyond. 77 cents to Southern to Meridian; 68 cents to others beyond.
Southern (Alabama group 3).		Hattiesburg.	(2)		
I. C. (southern Illinois and western Kentucky)	N. O. M. & C.	Reform.....	4 9	1. 95	{ \$1 to I. C. to Jackson; 85 cents to G. & S. I. beyond. 33 cents to Southern to Columbus; 85 cents to G. & S. I. beyond Hattiesburg. 66 cents to Southern to Meridian; \$1.29 to others beyond. 50 cents to Southern to Meridian; \$1.45 to others beyond. \$1.10 to I. C. to Jackson; \$1 to N. O. G. N. beyond. \$1.10 to I. C. to Jackson; \$1.05 to N. O. G. N. beyond. 60 cents to 78 cents to Southern to Meridian; 90 cents to 60 cents to N. O. G. N. beyond Jackson. 30 cents to Southern to Columbus; 90 cents to N. O. G. N. beyond Jackson. 73 cents to Southern to Meridian; \$1.42 to others beyond. 30 cents to Columbus; \$1.15 to N. O. G. N. beyond Jackson; 5 cents to Miss. Cent. beyond 41 cents to Southern to Columbus; 68 cents to others beyond Meridian. 75 cents to Southern to Mathiston; 70 cents to others beyond. 77 cents to Southern to Meridian; 68 cents to others beyond.
Southern (Alabama group 3).		High Point..	4 10		
I. C. (southern Illinois and western Kentucky)	.....do.....	Reform.....	2 8	1. 70	{ \$1 to I. C. to Jackson; 85 cents to G. & S. I. beyond. 33 cents to Southern to Columbus; 85 cents to G. & S. I. beyond Hattiesburg. 66 cents to Southern to Meridian; \$1.29 to others beyond. 50 cents to Southern to Meridian; \$1.45 to others beyond. \$1.10 to I. C. to Jackson; \$1 to N. O. G. N. beyond. \$1.10 to I. C. to Jackson; \$1.05 to N. O. G. N. beyond. 60 cents to 78 cents to Southern to Meridian; 90 cents to 60 cents to N. O. G. N. beyond Jackson. 30 cents to Southern to Columbus; 90 cents to N. O. G. N. beyond Jackson. 73 cents to Southern to Meridian; \$1.42 to others beyond. 30 cents to Columbus; \$1.15 to N. O. G. N. beyond Jackson; 5 cents to Miss. Cent. beyond 41 cents to Southern to Columbus; 68 cents to others beyond Meridian. 75 cents to Southern to Mathiston; 70 cents to others beyond. 77 cents to Southern to Meridian; 68 cents to others beyond.
Southern (Alabama group 3).		High Point..	2 27		
I. C. (southern Illinois and western Kentucky)	.....do.....	Reform.....	2 78	1. 60	{ \$1 to I. C. to Jackson; 85 cents to G. & S. I. beyond. 33 cents to Southern to Columbus; 85 cents to G. & S. I. beyond Hattiesburg. 66 cents to Southern to Meridian; \$1.29 to others beyond. 50 cents to Southern to Meridian; \$1.45 to others beyond. \$1.10 to I. C. to Jackson; \$1 to N. O. G. N. beyond. \$1.10 to I. C. to Jackson; \$1.05 to N. O. G. N. beyond. 60 cents to 78 cents to Southern to Meridian; 90 cents to 60 cents to N. O. G. N. beyond Jackson. 30 cents to Southern to Columbus; 90 cents to N. O. G. N. beyond Jackson. 73 cents to Southern to Meridian; \$1.42 to others beyond. 30 cents to Columbus; \$1.15 to N. O. G. N. beyond Jackson; 5 cents to Miss. Cent. beyond 41 cents to Southern to Columbus; 68 cents to others beyond Meridian. 75 cents to Southern to Mathiston; 70 cents to others beyond. 77 cents to Southern to Meridian; 68 cents to others beyond.
St. L. & S. F. (Alabama group 2).		High Point..	2 97		

1 Jackson.
2 Hattiesburg.

3 Brookhaven.
4 Ackerman.

5 Mathiston.
6 New Albany.

40 I. C. C.

The Gulf & Ship Island and the New Orleans Great Northern receive exactly the same divisions on Alabama coal carried by the Illinois Central to Jackson as on southern Illinois or western Kentucky coal. All of the divisions shown apply equally on all shipments of coal regardless of the status of the consignee. Shipments consigned to the local lines named apparently are billed to stations beyond the junction points in entire good faith, and there is no evidence that they are not actually moved to the stations to which they are billed.

Where shipments from Alabama are delivered to the purchasing carriers at the same junction points as shipments from western Kentucky or southern Illinois and the Illinois Central does not participate in the movement of the shipments from Alabama, discrimination by the Illinois Central is impossible. The allowance of smaller divisions to the purchasing lines by the carriers from Alabama than by the Illinois Central may enable the purchasing lines to get their fuel coal delivered to them at equal rates from Alabama or western Kentucky and southern Illinois even though the local rates to their junction point at which they receive the coal may be lower from Alabama than from Kentucky and Illinois. But this does not prove that the arrangement is inequitable where the connecting carriers are different, serve different producing fields, and are active competitors. In the only instances where the same connecting carriers participate in the movement from Alabama and from Kentucky and Illinois, the divisions accorded the purchasing line are the same regardless of where the shipments originate. Where the lines from Alabama deliver to the purchasing lines at different junctions from those used by the Illinois Central, discrimination is clearly impossible. Complainants contend that the same junction points should be used for all of these shipments of fuel coal, but base the contention entirely on their opinion that such a course would be practicable. But no substantial evidence is adduced in support of this opinion.

We find that the unjust discrimination alleged in connection with these divisions is not established. The readjustment of the rates involved may be accompanied by a readjustment of the carriers' division sheets, upon which the finding just expressed must not be considered conclusive.

**SOUTHEASTERN ARKANSAS, LOUISIANA WEST OF THE MISSISSIPPI RIVER,
AND SOUTHEASTERN TEXAS.**

Operators in southern Illinois are the principal competitors of Alabama operators in this territory. Alabama operators have a rate advantage of more than 15 cents per ton at nearly all points served by the Southern Pacific and the Texas Pacific railroads, while southern Illinois operators have an advantage at nearly all

points served by the Iron Mountain and the St. Louis Southwestern railways. Equal rates apply to a few points, and to a few other points Alabama operators have an advantage of 15 cents. Many of these rates are made on the basis of rates to and from the Mississippi River so that many of the present rates are higher than the rates in effect when the complaint was filed, because of the increased rates allowed to the river in *Coal and Coke Rates in the Southeast, supra*. The following rates, with distances over the shortest open routes, are fairly illustrative; rates stated in cents per ton:

To—	From Du Quoin, Ill., I. C. group 3.		From Herrin, Ill., St. L., I. M. & S. group 2.		From Marion, Ill., C. & E. I. group 2.		From Jasper and Empire, Ala., St. L. & S. F. groups 1 and 2.		From Brookside, Ala., Southern group 3.	
	Miles.	Rate.	Miles.	Rate.	Miles.	Rate.	Miles.	Rate.	Miles.	Rate.
Pine Bluff, Ark.....	350	235	344	235	338	235	400	1 255	450	1 280
Eldorado, Ark.....	510	275	469	275	498	275	474	1 310	534	1 335
Monroe, La.....	542	210	463	210	557	210	{ ² 404 225 ³ 425 235	} 383	210	
Shreveport, La.....	534	270	527	270	522	270	{ 668 215 505 240			
Alexandria, La.....	{ 655 305 725 270	{ ⁴ 270 ⁵ 320	632	270	630	270	545 260	505	250	
Lafayette, La.....	669									
Dallas, Tex.....	696	335	681	335	682	335	717	450	670	450
Houston, Tex.....	765	310	791	310	753	310	736	285	701	285

¹ Combination on Memphis.
² Distance from Empire.
³ Distance from Jasper.

⁴ Summer.
⁵ Winter.
⁶ Combination on New Orleans.

Complainants do not specify just what differentials they desire in favor of Alabama mines to points in this territory. Their position apparently is that the differentials asked to Memphis, Vicksburg, and other points on the east bank of the Mississippi River should be preserved in the rates to the points involved beyond.

The only evidence of the relative movement to this territory from the three producing fields is the following estimate by complainants:

Destination.	Popula- tion.	Tonnage used.	Tonnage from Alabama.	Alabama rate advantage, per ton.
Alexandria, La.....	11,000	25,000	900	Cents. 10
Minden, La.....	3,000	5,000	250	1 5
De Ridder, La.....	2,100	5,000	0	25
Beaumont, Tex.....	20,000	30,000	3,000	25
Houston, Tex.....	94,000	25,000	6,000	25

¹ Differential against Alabama mines.

The total consumption attributed to each of these points is a mere estimate, and there is no evidence that all of the tonnage not
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furnished by Alabama operators moves from southern Illinois or western Kentucky. The figures given indicate that the rates are not entirely to blame for complainant's inability to do more business. The St. Louis & San Francisco admits that it has never asked its west bank connections for joint rates.

The evidence adduced by complainants is too meager to be helpful, and we find that the rate adjustment assailed to this territory is not shown to be either unreasonable or unjustly discriminatory.

In view of the fact, stated above, that the differential adjustment approved in *Bituminous Coal to Mississippi Valley Territory, supra*, will remove the discrimination herein found to the extent that it is unlawful, the complaint will be dismissed.

No. 8039.

EASTERN SHORE OF VIRGINIA PRODUCE EXCHANGE

v.

NEW YORK, PHILADELPHIA & NORFOLK RAILROAD
COMPANY ET AL.

PORTION OF FOURTH SECTION APPLICATION No. 1772.

Submitted December 16, 1915. Decided June 27, 1916.

Upon complaint that rates on vegetables and berries from points in Accomac and Northampton counties, Va., to points in the states of Ohio, Indiana, Michigan, Illinois, Missouri, Wisconsin, and Iowa are unreasonable, unduly preferential, and in violation of the long-and-short-haul provision of the act; *Held*, That the rates assailed have not been shown to be unreasonable or unduly preferential. The conclusions here reached are without prejudice to any future action upon defendants' fourth section application. Complaint dismissed.

N. B. Wescott, James E. Heath, and Cadwallader J. Collins for complainant.

J. Edward Cole for Norfolk Truckers Exchange, intervener.

Frederic L. Ballard for Pennsylvania lines.

Charles D. Drayton for Illinois Central Railroad Company.

REPORT OF THE COMMISSION.

HALL, *Commissioner*:

Complainant is a Virginia corporation organized for the purpose of marketing farm products grown by its stockholders. By complaint filed May 10, 1915, it alleges that the rates on vegetables and berries from points in Accomac and Northampton counties, Va., on the line of the New York, Philadelphia & Norfolk Railroad, to points in the states of Ohio, Indiana, Michigan, Illinois, Missouri, Wisconsin, and Iowa are unreasonable, unduly preferential, and in violation of the long-and-short-haul rule of the fourth section of the act. The establishment of reasonable and nonpreferential rates is prayed. That portion of Fourth Section Application No. 1772 filed by C. C. McCain, agent, which seeks authority to continue rates on vegetables and berries from Norfolk, Va., to points in Ohio, Indiana, Michigan, Illinois, Missouri, Wisconsin, and Iowa which are lower than the rates contemporaneously applicable on like traffic from points on the New York, Philadelphia & Norfolk Railroad in Northampton and Accomac counties, and other intermediate points, was set for hearing with

this case. The Norfolk Truckers Exchange intervened to protect the interests of Norfolk shippers.

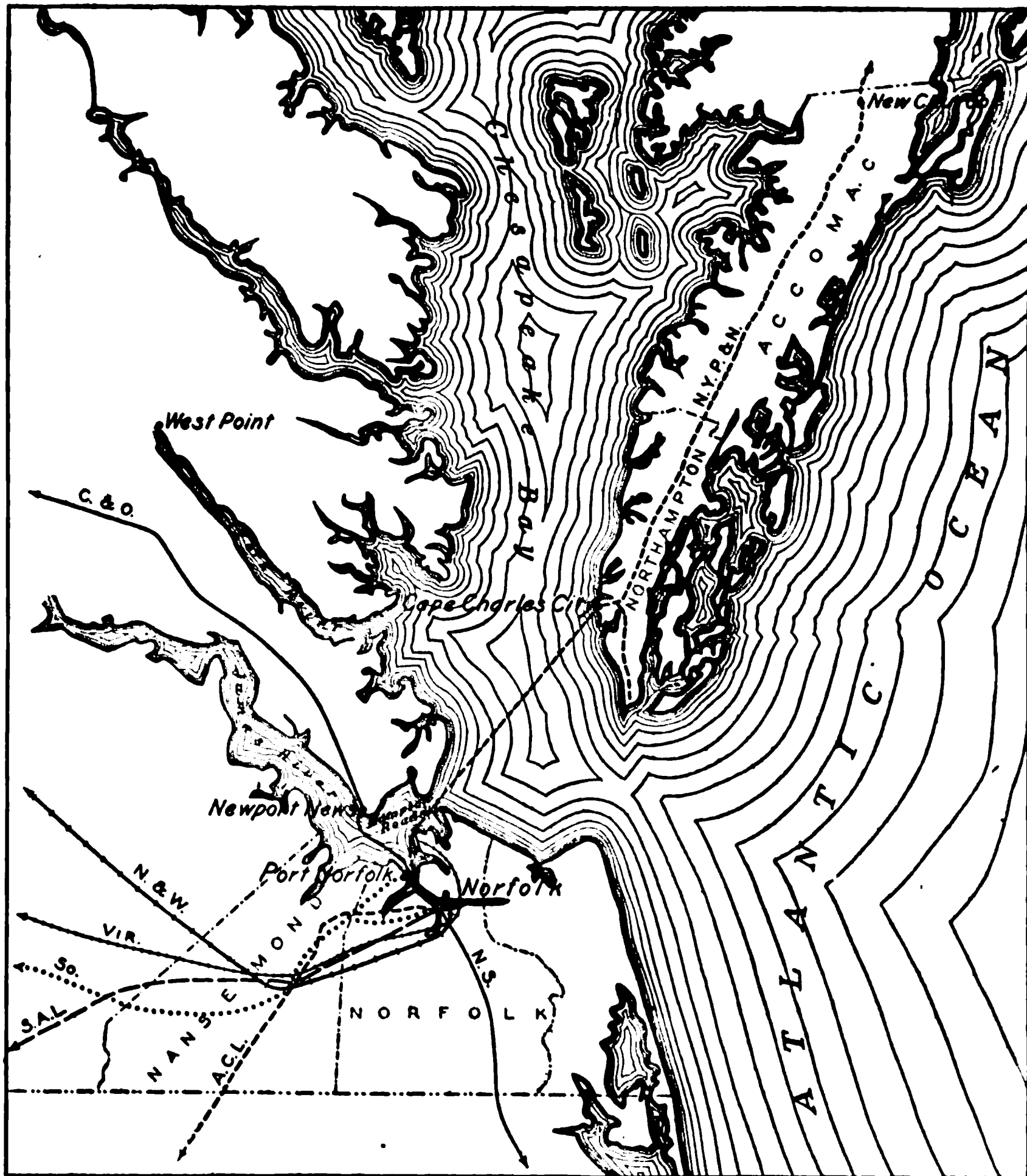
Accomac and Northampton counties, known as the eastern shore of Virginia, occupy the southern portion of a peninsula between the Atlantic Ocean and Chesapeake Bay. Cape Charles City, hereinafter called Cape Charles, is 12 miles from the southernmost point of the peninsula. Norfolk, Va., is 36 miles south of Cape Charles across Chesapeake Bay and Hampton Roads.

The New York, Philadelphia & Norfolk Railroad, a subsidiary line of the Pennsylvania Railroad system, is the only rail carrier which serves the eastern shore of Virginia. It operates a car float and barge service between Cape Charles and Norfolk, on the east side of the Elizabeth River, and Port Norfolk, on the west side of the river. At the latter point it has extensive terminals and connects with the Norfolk & Portsmouth Belt Line, which performs switching service to and from connections with other carriers reaching Norfolk. At Delmar, Del., the New York, Philadelphia & Norfolk connects with the Delaware division of the Philadelphia, Baltimore & Washington Railroad and thence via Wilmington, Del., reaches all the territory served by the Pennsylvania lines and their connections.

The territory of origin named in the complaint covers all stations on the New York, Philadelphia & Norfolk Railroad in Accomac and Northampton counties. The northernmost station is New Church, Va., about 60 miles from Cape Charles. All these stations take the same rates to the points of destination before us. Cape Charles will be taken as representative of all points of origin, and points in central freight association territory as representative of the points of destination.

Potatoes are the principal product grown in Accomac and Northampton counties and complainant's evidence relates almost wholly to the rates on this vegetable. The production of potatoes for the spring market in these counties far exceeds that of any other section of the state. In disposing of their product the growers in this section are largely dependent upon central freight association territory for a market. They there come into competition with potatoes shipped from the counties of Norfolk and Nansemond and from the peninsula which lies between the James and York rivers. Norfolk and Nansemond counties are served by the Norfolk & Western Railroad, the Seaboard Air Line Railway, the Southern Railway, and the Atlantic Coast Line Railroad. The Norfolk & Western has its own rails into Ohio and farm products delivered to it for central freight association territory can be carried by it to Ohio and there delivered to its connections. Farm products grown at points not served by

the Norfolk & Western, destined to central freight association territory, are brought to Norfolk by the Atlantic Coast Line, the Seaboard Air Line, and the Southern. At Norfolk the traffic may be turned over to the New York, Philadelphia & Norfolk Railroad, which by means of its connecting Pennsylvania lines can complete the movement through to destination.



The peninsula which lies between the James and York rivers is not served by any rail carrier except the Chesapeake & Ohio Railway. Shipments of potatoes from this section to central freight association territory are carried by the Chesapeake & Ohio to Cincinnati, Ohio, and there delivered to its connections if the destination points are not on its own line. The accompanying map illustrates the several territories of origin and the routes leading therefrom.

The products shipped by complainant move upon class rates, or upon rates which bear a definite relation to the class rates, and are governed by the official classification. In that classification potatoes, onions, and cabbages, the vegetables shipped by complainant, are rated fifth class in carloads. In less than carloads potatoes are rated fourth class, and onions and cabbages rule 26; that is, 20 per cent below third class but not lower than fourth class. Berries are rated first class in carloads and one and a half times first class in less than carloads. Strawberries, which were the only berries referred to by complainant, move on any-quantity rates.

The class rates, in cents per 100 pounds, effective on traffic to Chicago from Norfolk and Cape Charles, are as follows:

From—	1	2	3	4	5	6
Norfolk.....	62.8	54.3	45.5	30.8	26.5	21.3
Cape Charles.....	78.8	68.3	52.5	36.8	31.5	26.3

Traffic delivered to the New York, Philadelphia & Norfolk at Norfolk, destined to central freight association territory, moves through Cape Charles. The higher rates published from the latter point are protected by an appropriate fourth section application.

The following table gives rates, in cents per 100 pounds, on potatoes, cabbages, onions, and strawberries from Norfolk to points in central freight association territory, illustrative of the general situation, and the short-line mileages from Norfolk via the Pennsylvania lines, the Chesapeake & Ohio, Norfolk & Western, and Virginian railways:

From Norfolk, Va., to—	Miles.	Potatoes.		Cabbage and onions.		Strawberries, any quantity.
		L. C. L.	C. L.	L. C. L.	C. L.	
Wheeling, W. Va., via—						
P. R. R.....	627	25.3	21.3	20.9	21.3	86.6
C. & O.....	683					
N. & W.....	790					
Va. Ry.....	697					
Cleveland, Ohio, via—						
P. R. R.....	709	25.3	21.3	20.9	21.3	86.6
C. & O.....	769					
N. & W.....	844					
Va. Ry.....	783					
Toledo, Ohio, via—						
P. R. R.....	822	25.7	21.6	30.4	21.6	86.6
C. & O.....	754					
N. & W.....	829					
Va. Ry.....	768					
Columbus, Ohio, via—						
P. R. R.....	752	25.7	21.6	30.4	21.6	86.6
C. & O.....	631					
N. & W.....	706					
Va. Ry.....	647					
Cincinnati, Ohio, via—						
P. R. R.....	872	27.0	23.4	31.8	23.4	90.9
C. & O.....	665					
N. & W.....	713					
Va. Ry.....	679					

From Norfolk, Va., to—	Miles.	Potatoes.		Cabbage and onions.		Strawberries, any quantity.
		L. C. L.	C. L.	L. C. L.	C. L.	
Indianapolis, Ind., via—						
P. R. R.....	940	28.9	24.7	33.8	24.7	98.0
C. & O.....	775					
N. & W.....	823					
Va. Ry.....	789					
Louisville, Ky., via—						
P. R. R.....	1,021	27.0	23.4	31.8	23.4	106.2
C. & O.....	727					
N. & W.....	755					
Va. Ry.....	741					
East St. Louis, Ill., via—						
P. R. R.....	1,178	37.1	31.9	43.5	31.9	126.3
C. & O.....	998					
N. & W.....	1,026					
Va. Ry.....	1,012					
Fort Wayne, Ind., via—						
P. R. R.....	881	28.8	24.7	33.8	24.7	94.4
C. & O.....	821					
N. & W.....	863					
Va. Ry.....	835					
Chicago, Ill., via—						
P. R. R.....	1,029	30.8	26.5	36.4	26.5	106.2
C. & O.....	950					
N. & W.....	1,021					
Va. Ry.....	964					

The next table shows the rates in cents per 100 pounds on the same commodities from Cape Charles to the same points, and the short-line mileage via the Pennsylvania lines:

From Cape Charles, Va., to—	Miles.	Potatoes.		Cabbage and onions.		Strawberries, any quantity.
		L. C. L.	C. L.	L. C. L.	C. L.	
Wheeling, W. Va.....	591	25.8	21.3	29.9	21.3	88.6
Cleveland, Ohio.....	673	26.1	22.4	30.2	22.4	96.6
Toledo, Ohio.....	786	23.7	24.6	33.2	24.6	92.3
Columbus, Ohio.....	716	28.7	24.6	33.2	24.6	92.3
Cincinnati, Ohio.....	836	32.0	27.4	37.0	27.4	102.9
Indianapolis, Ind.....	904	34.2	29.3	39.4	29.3	110.0
Louisville, Ky.....	985	36.8	31.5	42.4	31.5	118.2
East St. Louis, Ill.....	1,142	43.1	36.9	49.5	36.9	138.3
Fort Wayne, Ind.....	845	33.1	28.4	38.2	28.4	106.4
Chicago, Ill.....	993	36.8	31.5	42.4	31.5	118.2

It will be noted that to Wheeling, W. Va., rates from both Norfolk and Cape Charles are the same, and that to the other points the rates from Cape Charles on potatoes, carloads, range from a little over a cent to 5 cents higher than from Norfolk. This difference is due to grouping in central freight association territory in accordance with the percentage scale of the New York-Chicago rates. It will also be noted that to a large part of central freight association territory the distances are shorter via the direct lines from Norfolk than via the Pennsylvania lines. To Akron, Cleveland, and other points in the northern part of the state of Ohio, the Pennsylvania system has the short line. The rates from Norfolk via the lines leading from that point, it will be observed, are relatively much lower to these

points than the rates they maintain to Chicago, Cincinnati, and other central freight association points.

There is no evidence in the record that defendants' rates are unreasonable *per se*. As is well known, the New York-Chicago rates are basic rates for the percentage scale in central freight association territory and also fix the Philadelphia and Baltimore rates. Rates from Cape Charles to Chicago are constructed on the basis of arbitraries over the Philadelphia rates to Chicago. Addition of these arbitraries produces the same scale of rates as from New York, and the rates from both points are scaled to intermediate points on established percentages of the New York-Chicago scale based on distances. Thus the rates from Cape Charles to all central freight association territory points are the same as from New York. Defendants assert that in view of the shorter distances from New York to most of these points, the greater density of traffic, and competitive conditions, Cape Charles has been given a most favorable adjustment. In numerous cases the reasonableness of the New York-Chicago scale of rates has been attacked. *Detroit Board of Trade v. Grand Trunk Railway of Canada*, 2 I. C. C., 315; *G. C. Pratt Lumber Company v. Chicago, I. & L. R. Co.*, 10 I. C. C., 29; *Saginaw Board of Trade v. Grand Trunk Ry. Co.*, 17 I. C. C., 128; *Scott Paper Co. v. P. R. R.*, 26 I. C. C., 601. This scale, however, has remained practically undisturbed except for the increase following *The Five Per Cent Case*, 32 I. C. C., 325. We are of opinion and find that the rates assailed have not been shown to be unreasonable.

Complainant's whole case as presented is based upon the fact that the defendants maintain lower rates on traffic from Norfolk to destinations in central freight association territory than from points on the eastern shore of Virginia to the same destinations. Defendants explain that this adjustment results from conditions over which they have no control. As will be seen from the map, the Chesapeake & Ohio system and the Norfolk & Western both compete for westbound traffic from Norfolk. The Chesapeake & Ohio system reaches Cincinnati and Chicago with its own rails, and the rails of the Norfolk & Western system extend to Cincinnati and Columbus. Both systems publish a full line of class rates to central freight association territory and engage generally in traffic from Norfolk to that territory. The eastern trunk lines have no control over the westbound rates from Norfolk. These rates are on the basis of the "winter" ocean-and-rail rates from Baltimore, Md. They are lower than the all-rail rates to Chicago from Baltimore by the following amounts:

Classes.....	1	2	3	4	5	6
Cents per 100 pounds.....	8	6	4	3	2	2

40 I. C. C.

The distances from Baltimore via the short line to typical points in central freight association territory are shorter than the short-line distances from Norfolk to the same points, as shown by the following comparison:

From—	To Cincinnati.	To Columbus.	To Chicago.
Norfolk.....	665	631	950
Baltimore.....	593	527	808
Difference.....	72	104	142

Defendants consider the rates established by the Chesapeake & Ohio and the Norfolk & Western unduly low, but publish the same rates in order to participate in some of the traffic offered at Norfolk.

Complainant's position is that, because the defendants have met the rates of their competitors at Norfolk, they should extend those rates to the eastern shore of Virginia. We can not accept this view. It is well settled by decisions of this Commission and of the courts that a charge of undue preference can not properly be predicated upon conditions resulting from controlling competition. *Paragon Plaster Co. v. N. Y. C. & H. R. R. Co.*, 19 I. C. C., 480; *Sioux City Terminal Elevator Company v. C., M. & St. P. Ry. Co.*, 23 I. C. C., 98, 107; *Kenner Truck Farmers Asso. v. I. C. R. R. Co.*, 32 I. C. C., 1, 10.

Transportation conditions at Norfolk are different from those at Cape Charles, and so far as appears the Norfolk rates are beyond the control of the defendants here. We do not find under the circumstances that the rates complained of are unduly prejudicial to complainant or to the locality of Northampton and Accomac counties.

As already stated, the class rates applied by defendants on traffic from Norfolk result in departures from the long-and-short-haul provision of the act. Defendants ask that an order be entered approving the application which protects these rates. This proceeding is confined to rates on four products of the farm. As to three of these there is scarcely any evidence. A finding with respect to the fourth section departures would in effect be a finding as to the present class-rate adjustment from Norfolk and all intermediate points on traffic moving to central freight association territory via the New York, Philadelphia & Norfolk. Such a general adjustment should not be passed upon on this record, and the conclusions announced *supra* are without prejudice to any future action upon the fourth section application.

The complaint must be dismissed, and it will be so ordered.

40 I. C. C.

No. 7818.
PORT HURON & DULUTH STEAMSHIP COMPANY
v.
PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted February 1, 1916. Decided June 27, 1916.

Divisions prescribed of joint rates applicable via routes formed by rail lines west of Duluth, Minn., the water line of the Port Huron & Duluth Steamship Company, the Grand Trunk Railway Company of Canada, and the Pennsylvania Railroad Company and certain of its connections.

W. L. Jenks for complainant.

Frederick L. Ballard and *George Stuart Patterson* for Pennsylvania Railroad Company.

Charles Donnelly for Northern Pacific Railway; Great Northern Railway Company; Chicago, St. Paul, Minneapolis & Omaha Railway Company; and Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

H. C. Martin for Grand Trunk Railway system.

SUPPLEMENTAL REPORT OF THE COMMISSION.

HALL, Commissioner:

Our previous report in this proceeding, *Port Huron & Duluth S. S. Co. v. Pa. R. R. Co.*, 35 I. C. C., 475, and the order entered thereon, required the defendants to establish through routes and joint rates for the interstate transportation of property in connection with each other and with the complainant from and to points in trunk line territory on the lines of the Pennsylvania Railroad Company, hereinafter referred to as the Pennsylvania, and certain of its connections, to and from Duluth, Minn., Superior, Wis., and points west thereof on the lines of the Northern Pacific Railway Company, Great Northern Railway Company, Chicago, St. Paul, Minneapolis & Omaha Railway Company, and Minneapolis, St. Paul & Sault Ste Marie Railway Company, hereinafter referred to as the western lines. Upon supplemental petition alleging, in substance, that through routes and joint rates had been made effective in compliance with our order, but that the parties had been unable to agree upon divisions the proceeding was reopened for the purpose of receiving such evidence as would enable the Commission to prescribe just and reasonable divisions

of the joint rates thus established. The facts with reference to the transportation services rendered by complainant and the rail lines are sufficiently stated in our former report, *supra*, and need not be repeated here.

THE POSITIONS OF THE PARTIES WITH RESPECT TO THE ISSUES.

Eighty per cent of complainant's eastbound tonnage consists of grain products. The joint rate of 23 cents per 100 pounds applicable to the transportation of grain products in carloads from Minneapolis, Minn., to New York is used as representative by all parties in stating their contentions as to the proper basis of divisions. Those contentions, in summarized form, are as follows: Complainant asks that the actual cost of transfer between car and boat be first deducted and retained by the carriers subject to that expense, and that the balance of the rate be prorated among the several carriers in proportion to short-line distances, using for this purpose two water miles as equivalent to one rail mile; the Pennsylvania asks the same divisions as it receives from its all-rail traffic between Chicago and New York which is interchanged with the Grand Trunk at Black Rock, N. Y.; the Grand Trunk, while satisfied with its current divisions of this all-rail traffic, insists that its earnings would be unremunerative if the division here asked by the Pennsylvania and complainant should be granted; and the western lines question the jurisdiction of the Commission to make an order which would change their present divisions, asserting that the record fails to show disagreement as to those divisions, and that since exercise of the Commission's jurisdiction is conditioned upon the failure of carriers to agree, that jurisdiction is limited to the divisions about which they disagree.

THE JURISDICTIONAL OBJECTIONS OF THE WESTERN LINES.

In the original petition it is expressly alleged that the current divisions of the western lines are inequitable. This they deny in their answers, and the Northern Pacific affirmatively alleges that the complainant now receives a larger share of the through rate than is just or equitable. The record shows that complainant communicated with the western lines suggesting a conference "for the purpose of agreeing upon equitable divisions of the rates." In reply the Northern Pacific stated its readiness to attend such a conference, but the Great Northern in effect declined, expressing its understanding that the controversy was between complainant and its eastern connections. In substance the position of each of the parties is that it is not concerned with the divisions accorded to the others so long as it receives the proportion which it claims. The Pennsyl-

vania asks a larger division than is now received by other lines operating east of Buffalo which join the complainant in through routes, and the complainant asks a larger division than it receives in connection with those routes. While the western lines and the Grand Trunk are apparently satisfied with their present divisions, they are not willing voluntarily to accept less. It is obviously impossible to divide the joint rates and accord to each of the connecting carriers the proportion for which it asks. Under such circumstances it seems improbable that any result except delay would follow if our decision were deferred. A joint rate is an entirety and ordinarily it would be difficult if not impossible to fix just divisions unless the entire rate and the interests of all participating carriers were considered. The western lines, while reserving their objection, offered evidence in support of their current divisions. The extent to which the carriers may be in accord as to those divisions is a fact to be considered in determining the issues, but does not limit the Commission's jurisdiction over divisions to a part only of the joint rate.

PRESENT BASIS OF DIVISIONS OF RATES APPLICABLE TO OTHER ROUTES.

For some years complainant has participated in through routes and joint rates in connection with lines operating west of Duluth, with the Grand Trunk, and with lines other than the Pennsylvania operating east of Buffalo, N. Y., such as the Lehigh Valley Railroad Company, hereinafter referred to as the Lehigh Valley. By these routes the current divisions of the rate of 23 cents on grain products from Minneapolis to New York, a representative destination, are:

	Cents.
Western lines.....	5.8
Complainant.....	5.8
Grand Trunk.....	4.0
Lehigh Valley.....	7.4
Total.....	23.0

The method of determining these divisions is as follows: Twenty-five per cent of the entire rate is taken by the western lines as their proportion. Then the New York terminal charge of 3 cents is deducted and that added to the proportion of the Lehigh Valley. This leaves 14.2 cents, of which complainant receives 33.6 per cent, or 4.8 cents. From the remainder a terminal allowance of 1.3 cents is deducted and added to the proportion of the Grand Trunk. The balance is divided, 33.7 per cent to the Grand Trunk and 66.3 per cent to the Lehigh Valley. For a number of years complainant received a division of 4.8 cents, but for the past two years it has been allowed 1 cent per 100 pounds out of the earnings of the Lehigh Valley east of Suspension Bridge on all eastbound traffic rated sixth

class or lower, except to points taking Buffalo, Rochester, or Syracuse rates. Other lines operating east of Buffalo, except the Pennsylvania, make complainant the same allowance, so that its current division on New York business is 5.8 cents. The mileages shown on the percentage sheet naming these proportions are, for complainant, 344; for the Grand Trunk, 229; for the Lehigh Valley, 450. The actual mileage of the complainant from Duluth to Port Huron is 688 miles, of the Grand Trunk from Port Huron to its junction with the Lehigh Valley at Suspension Bridge, 187 miles, while the mileage of the Lehigh Valley from that junction point to New York is 474 miles. The arbitrary assignment of 450 miles as the distance from the Niagara frontier to New York is used by the Pennsylvania in determining divisions of all-rail traffic interchanged with the Grand Trunk, although its actual mileage from Black Rock to New York is 518 miles. It may properly be noted here that certain carriers operating east of Buffalo have expressed their dissatisfaction with the present divisions of the joint rates applicable in connection with complainant's line. See *Lake and Rail Rate Cancellations*, 38 I. C. C., 201.

COMPLAINANT'S PROPOSED BASIS OF DIVISIONS.

Complainant's suggestion, as stated, is that the actual cost of transfer between car and boat be first deducted and retained by the carriers subject to that expense, and that the remainder be prorated among the various carriers in proportion to short-line distances, using in this connection 344 miles as complainant's constructive mileage, and as the basis of the Pennsylvania's proportion 411 miles, which is the distance of the Delaware, Lackawanna & Western from Buffalo to New York.

Complainant performs the transfer between boat and car at its eastern terminus through a contractor at a cost of 38 cents per ton, or 1.9 cents per 100 pounds, and receives from the Grand Trunk 26 cents per ton, or 1.3 cents per 100 pounds, making the net cost of transfer per 100 pounds at that point 0.6 cent to the complainant and 1.3 cents to the Grand Trunk. At Duluth the transfer is performed by the western lines, which charge complainant 18 cents per ton, or 0.9 cent per 100 pounds, as its share of the cost. The cost to the western lines was not shown, but complainant estimated the total cost at Duluth to be 30 cents per ton, or 1.5 cents per 100 pounds, and it was stated that the cost of transferring eastbound shipments slightly exceeds that affecting shipments westbound. These figures would indicate that the cost of transfer at Port Huron and Duluth is approximately $3\frac{1}{2}$ cents per 100 pounds. Complainant suggests that this transfer cost be divided one-fourth each to the western lines and the Grand Trunk and one-half to the com-

plainant; that the remainder, 19½ cents, be prorated according to short-line distances.

The result would be as follows:

To—	Short-line mileage.	Per cent of total mileage.	Mileage prorate.	Transfer allowance.	Aggregate division.
			<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Western lines.....	150	13.6	2.65	0.88	3.53
Complainant.....	344	31.1	6.07	1.75	7.82
Grand Trunk.....	200	18.1	3.53	.87	4.40
Pennsylvania.....	411	37.2	7.25	.....	7.25

¹ Distance via Delaware, Lackawanna & Western Railroad from Buffalo to New York.

COMPLAINANT'S EVIDENCE OF OPERATING COSTS.

Complainant offered in evidence a summarized statement of its operating costs, prepared by auditors, itemized and stated in cents per ton as follows: Direct operating costs, 70.81; handling cargo, 34.77; shore expense, 12.42; claims and shortages, 1.57; depreciation of shore outfit, 0.38; total, 119.95 cents per ton, or 5.99 cents per 100 pounds. Exclusive of handling expense the cost shown is 4.25 cents per 100 pounds. Depreciation of boats or return upon investment are not included. The auditors who prepared this statement were not present at the hearing to explain it, and defendants urge that it is of little probative value owing to incomplete separation of freight and passenger costs. The statement contains the explanation that a "fair deduction" has been made from the total shore expense and charged to passenger expense. Neither the amount nor basis of this deduction is shown. The direct operating costs include the following items: Fuel, oil, towing, hull insurance, meals, wages, repairs, fit out, supplies, and sundries. The first four items were separated as between freight and passenger, but not the others. From complainant's passenger traffic, which it defines as wholly incidental to its service as a carrier of freight, it received \$25,960 in 1914, or slightly more than 10 per cent of its gross income. The passenger expense for the year as assigned was \$16,694. Complainant shows that, unlike grain or coal in bulk, the transfer of package freight can not be made by machinery, and in consequence the chief element of handling costs is in the employment of labor. In this connection complainant points to large wage increases during recent years. The rail carriers indicated in general terms that they have shared this experience.

DIVISIONS ASKED BY THE PENNSYLVANIA.

The position of the Pennsylvania, in substance, is that divisions of a joint rate are primarily a matter of bargaining between carriers, and that in this case the advantages which it has to offer fully entitle

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it to receive the division which it asks. As illustrating some of these advantages it asserts that complainant alone sought the establishment of the route to and from its rails; that complainant will profit in large measure from the access given by this route to the extensive territory of production and consumption and the expensive terminals of the Pennsylvania; that, on the other hand, the Pennsylvania will receive little, if any, new traffic, but will be short hauled as to all such traffic as would otherwise move a longer mileage over its rail lines; that if the Pennsylvania's former service in connection with a lake line reaching Erie, Pa., is continued, the new route via complainant's line will cause a partition of traffic which will result in an operating disadvantage; that as lake-and-rail rates are lower than all-rail rates, because transportation by water is less expensive than by rail, the entire difference in rates should be absorbed by the lake lines; that the transfer between car and boat is not directly incident to interchange of traffic with the Pennsylvania, and its cost therefore should be wholly borne by the lines which require it; and that the division which it receives from its all-rail traffic, interchanged with the Grand Trunk at Black Rock, would be a fair return for the service in connection with complainant's line, because satisfactory to the Grand Trunk as a division of the all-rail rates, because its service is identical in the case of both routes, and because the division is less than it would receive upon a mileage prorate.

The result of applying a mileage prorate without terminal deductions and using the actual mileage of the Pennsylvania would be as follows:

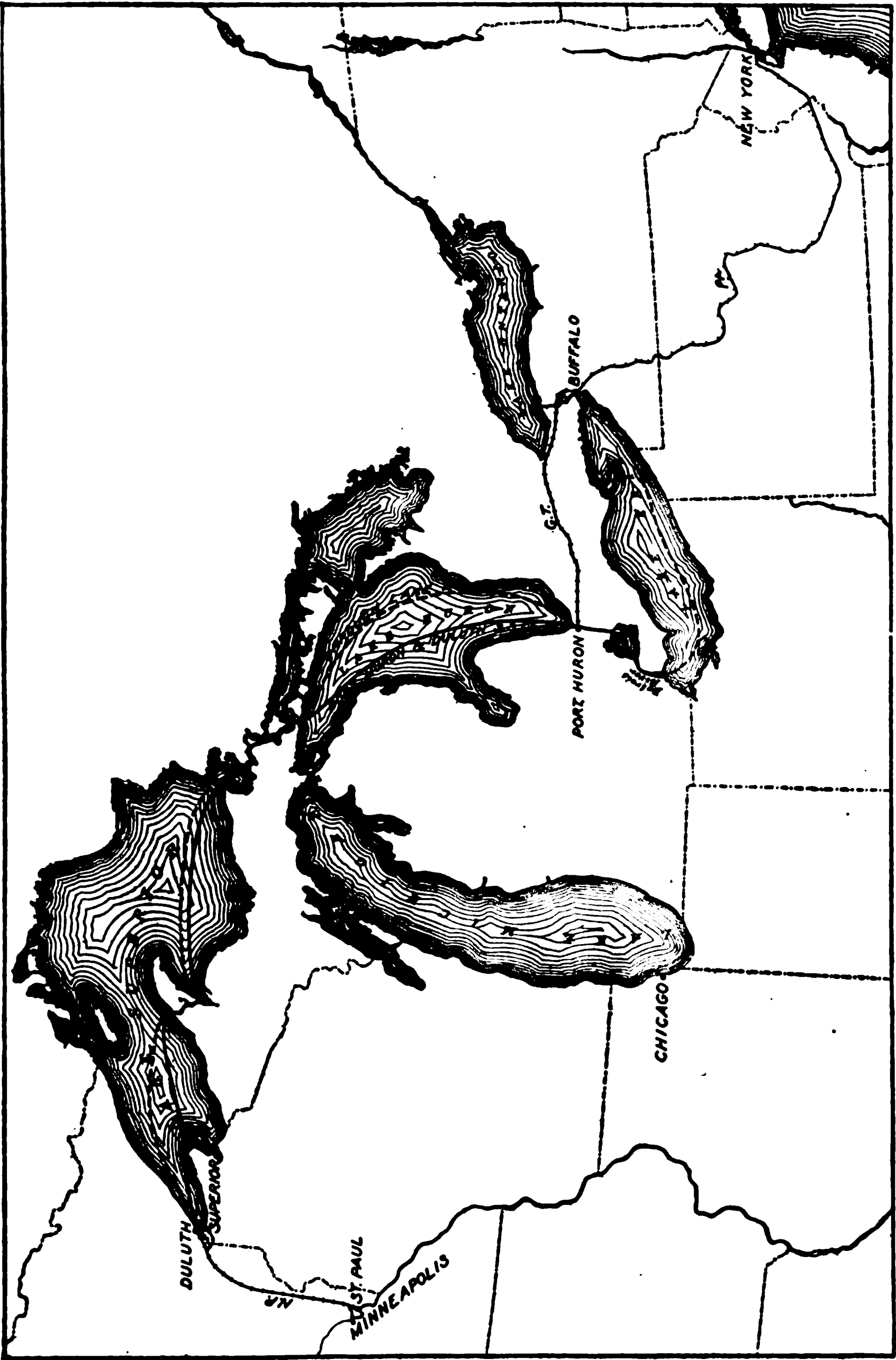
	Miles.	Per cent of total mileage.	Division.	Ton-mile earnings.
			<i>Cents.</i>	<i>Mills.</i>
Western lines.....	150	12.4	2.9	3.79
Complainant.....	¹ 344	28.4	6.5	3.79
Grand Trunk.....	200	16.5	3.8	3.79
Pennsylvania.....	518	42.7	9.8	3.79

¹ Two water miles counted as one rail mile.

If the average mileages of the western lines and of the lines operating east of Buffalo were used, the resulting divisions would be these:

	Miles.	Per cent of total mileage.	Division.	Ton-mile earnings.
			<i>Cents.</i>	<i>Mills.</i>
Western lines.....	163	14.1	3.3	3.97
Complainant.....	¹ 344	29.7	6.8	3.97
Grand Trunk.....	200	17.3	4.0	3.97
Eastern lines.....	450	38.9	8.9	3.97

¹ Two water miles counted as one rail mile.



justified in *Rates via Lake-and-Rail Routes*, 37 I. C. C., 302, and in consequence the division of lake-and-rail rates should not include a proportion of all-rail increases. The maximum division thus found reasonable includes a terminal deduction to the Pennsylvania in accordance with the recognized practice of the carriers in division of through rates to and from eastern territory.

3. That the balance of the through rate, 8.8 cents, should be divided by a mileage prorate between complainant and the Grand Trunk, counting two water miles as one rail mile. The mileages and resulting percentages and divisions to those carriers are as follows: Complainant, 344 miles, 63.2 per cent, 5.6 cents; Grand Trunk, 200 miles, 36.8 per cent, 3.2 cents. The cost of transfer should be borne by the carriers subject to that expense.

The parties will be expected to work out divisions of other rates applicable to this route in accordance with the principles announced herein.

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No. 6825.

NATIONAL SOCIETY OF RECORD ASSOCIATIONS ET AL.

v.

ABERDEEN & ROCKFISH RAILROAD COMPANY ET AL.

Submitted May 24, 1915. Decided June 29, 1916.

Upon complaint that the classifications, rates, rules, and regulations of the defendants applicable to the transportation of live stock in less than carloads are unjust, unreasonable, unduly discriminatory, and otherwise unlawful, *Held, That—*

1. The minimum weights applied to such shipments are unreasonable in so far as they exceed the minima herein found reasonable.
2. The standard or basic values limiting the liability of the carrier for animals so shipped are unreasonable in so far as they are less than the valuations herein found reasonable.
3. Rates should not increase for increased value above the reasonable standard values by percentages in excess of 2 per cent for each 50 per cent or fraction thereof of value in excess of such standard.
4. All provisions in the classifications and tariffs of defendants requiring shippers to furnish attendants with such shipments are unreasonable and should be canceled.
5. Rates on less-than-carload shipments of live stock crated found unreasonable to the extent that they exceed rates contemporaneously maintained on like animals uncrated.
6. Provisions of defendants' live-stock contracts will be considered in connection with the Commission's general investigation now pending, *In the Matter of Bills of Lading*, Docket 4844.

Cassoday, Butler, Lamb & Foster; C. R. Hillyer; and Wayne Dinsmore for complainants.

R. N. Collyer, Edward Barton, James Stillwell, William W. Collin, jr., W. R. Powe, R. Walton Moore, M. Carter Hall, and Willis H. Fowle for defendants.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

Complainants, associations representing nearly 100,000 breeders of pedigreed live stock, seek in this proceeding uniformity throughout the United States in the classifications, rules, and regulations relating to the transportation of live stock in less than carloads. All rail carriers reporting to this Commission, numbering some 2,728, are parties defendant. Complainants, whose shipments are from and through different classification territories, allege that the rules, regulations, and practices of the defendants relating to minimum weights, standard or basic values, increased charges for increased values above

the standard, attendants accompanying shipments, and the rates charged on small stock in crates, are unlawful, diverse, and conflicting. The comprehensiveness of the allegations of the complaint and the fact that all rail carriers engaged in the interstate transportation of live stock are parties defendant present issues the decision of which requires us to determine whether or not uniformity with respect to the transportation involved is practicable; and, if so, what classifications and rules should be prescribed as just and reasonable.

The defendants instead of taking advantage of the opportunity thus presented to aid in determining what uniformity is practicable and reasonable have contented themselves with a defense of existing diverse conditions.

The particular description of the classifications, regulations, rules, rates, and practices which are alleged to be unjust, unreasonable, unjustly discriminatory, unduly and unreasonably prejudicial and disadvantageous and unlawful, in violation of sections 1, 2, 3, and 6 of the act to regulate commerce, may be stated briefly as follows: (1) That the minimum weights upon which charges are assessed on shipments of live stock are too high; (2) the standard or basic values above which the rates are increased are too low; (3) the percentage by which rates increase as values increase above the basic values is too great; (4) requirement that attendants employed and paid by the shippers shall accompany shipments constitutes an unnecessary and unlawful burden; (5) rates on small stock in crates are unjust and unreasonable; (6) certain provisions of the contract of shipment are unlawful.

The issues presented in this case relating to the provisions contained in carriers' live-stock contracts will be considered by the Commission in connection with its general investigation now pending, *In the Matter of Bills of Lading*, Docket No. 4844.

Although some live stock other than the blooded stock in which complainants are interested moves in less than carloads, such movement is usually limited to short local hauls, is confined principally to the south, and the record justifies the conclusion that the greater and an increasing proportion of the less-than-carload movement of live stock consists of the registered animals sold for breeding purposes, and fancy and racing stock sent to fairs for exhibition or racing.

The stock shipped by members of complainant associations is usually loaded and unloaded by the shipper from a loading chute or the platform of the carriers' stations, as may best meet the convenience of the carriers, and moves either in stock or ordinary box cars. Feed and water is placed in the cars with animals so shipped and they have opportunity to rest, so that the provisions of the federal act requiring that live stock being transported in interstate commerce

must be stopped each 28 hours or, by consent of the shipper, each 36 hours for feed, water, and rest, does not apply. Shipments may be, and sometimes are, partitioned off or tied in one part of the car, thus limiting the space occupied, and, in contrast with shipments of live stock in carloads, there are very few claims for loss and damage on less-than-carload shipments. One reason for this difference is that carload shipments of meat animals are usually intended for slaughter, and loss of weight by delays in transportation results in enforceable claims for damage, while in the less-than-carload shipments loss of weight would rarely, if ever, involve damage claims.

Expedited service is not accorded to the same degree as in the case of carload shipments of live stock. The shipment being a live animal, however, greater expedition in the transportation is necessary than in the case of ordinary dead freight, and additional services are required of the carrier in supervising the shipment. While the carriers of course have the right of placing other freight in cars carrying these less-carload shipments of live stock, the necessity for starting the animal to its destination without unnecessary delay and the fact that not all commodities may be shipped in the same car with live stock limit the opportunity of the carriers to avail themselves of this right. The empty haul incident to this traffic is no greater than on traffic generally. Because of varying rules, rates, classifications, and practices much difficulty is experienced by shippers in obtaining from the carriers definite information as to the amount of charges applicable to particular proposed shipments.

A uniform classification of this traffic appears to be practicable, and if found to be so will undoubtedly tend to the elimination of incongruities and confusion. It is therefore desirable for these reasons, irrespective of any question of the revenues to be derived from the traffic by the carriers, that a uniform classification that is just and reasonable should be prescribed.

MINIMUM WEIGHTS.

Animals of the same kind vary as to weight. It is not always practicable to ascertain the exact weight, and, although varying in weight, live animals shipped in less than carloads may occupy similar spaces in the car. The practice of fixing a minimum weight upon which the charges are to be assessed is one of long standing and is common to the different classification territories, nor do complainants object to this practice as such. The weights so prescribed differ, however, in the several classification territories. Generally, in the western, southern, and official, as to some animals, when more than one animal of the same kind is shipped by the same consignor to the same consignee, different minimum weights apply to the animal or

animals in addition to the first. These minimum weights in each territory, as well as those desired by complainants for all territories, are shown from an exhibit of record, as follows:

Animal.	Western.	Official.	Southern.	Proposed.
	<i>Pounds.</i>	<i>Pounds.</i>	<i>Pounds.</i>	<i>Pounds.</i>
Stallions or jacks.....	3,000	7,000	3,000	3,000
Additional.....	Same.	Same.	Same.	Same.
Horses, mules, or horned animals.....	2,000	5,000	2,000	2,000
Second.....	1,500	.....	1,500	1,500
Third.....	1,500	.....	.....	1,500
Additional.....	1,000	3,000	1,000	1,000
Bulls.....	2,000	5,000	3,000	2,000
Additional.....	2,000	3,000	3,000	.....
Mare and colt (6 months).....	.....	5,500	2,500	.....
Additional.....	.....	3,500	2,500	.....
Cow and calf (6 months).....	.....	5,500	2,500	.....
Additional.....	.....	3,500	2,500	.....
Yearling bulls.....	.....	.....	2,000	.....
Yearling cattle.....	.....	.....	1,000	.....
Colts, 1 year, not crated.....	750	5,000	1,000	750
Additional.....	.....	3,000	1,000	750
Calves.....	(1)	500	1,000	500

1 Same as adult.

It will be observed that as to all animals but calves complainants suggest the weights named in the current western classification which, except on bulls, colts, and calves, are the same as in the southern classification. On the small number of less-than-carload shipments of stock other than high bred, racing, and fancy stock the average actual weights of live stock moving in the territory covered by the southern classification are somewhat less than in the territories covered by the other classifications, but as to the material movement of live stock in less than carloads we find that such weights of the animals in the three classification territories are substantially the same. It has been universally contended that rates in official classification territory should be lower than in the other territories and if there is to be a different minimum weight prescribed in that territory, the higher minimum being avowedly to obtain greater revenue, it should be lower rather than higher in the other two territories. As shown by complainants, the charges resulting from the application of current rates and minimum weights in official classification territory exceed in many instances by from 80 to 100 per cent the charges on the same kind of animal for a similar distance in western classification territory. The charges on one stallion in official classification territory, from Chicago, Ill., to Elida, Ohio, a distance of 201 miles, were at the time of the hearing 99 per cent of the charges on a carload of cattle, 124 per cent of the charges on a carload of hogs, and 142 per cent of the charges on a carload of calves or sheep; and one cow would have cost to transport 101 per cent of the charges on a carload of calves or sheep. Effective March 20, 1916, these carload rates

have been increased, and some increases made in the minimum weights.

The average actual weight of the several kinds of animals is less than that fixed in western classification territory. Upon the record we find that reasonable minimum weights are as shown in the subjoined table and that higher than such weights are and for the future will be unjust and unreasonable.

Animal.	Minimum weight.	Animal.	Minimum weight.
	<i>Pounds.</i>		<i>Pounds.</i>
Stallions or jacks.....	3,000	Cow and calf (6 months).....	2,500
Additional.....	Same.	Additional.....	2,500
Horses, mules, or horned animals.....	2,000	Yearling bulls.....	2,000
Second.....	1,500	Yearling cattle.....	1,000
Third.....	1,500	Colts, 1 year and under.....	750
Additional.....	1,000	Additional.....	750
Bulls.....	2,000	Calves less than 1 year old.....	500
Additional.....	2,000	Hogs.....	250
Mare and colt (6 months).....	2,500	Sheep and goats.....	200
Additional.....	2,500		

Also that crated animals should move at the same minimum weights as uncrated, and that the young of hogs, sheep, and goats should take the same weight as the grown animal.

STANDARD OR BASIC VALUES.

On January 6, 1913, the Supreme Court of the United States decided the case of *Adams Express Co. v. Croninger*, 226 U. S., 491, in which it was held that carriers might legally limit by contract fixing an agreed value their liability for loss and damage to shipments. As showing the conditions prior to that decision the Supreme Court in the *Croninger Case*, *supra*, quoted from the opinion in *Southern Pac. Co. v. Crenshaw Bros.*, 5 Ga. App., 675, as follows:

Some states allowed carriers to exempt themselves from all or a part of the common-law liability by rule, regulation, or contract; others did not. The federal courts sitting in the various states were following the local rule, a carrier being held liable in one court when, under the same state of facts, he would be exempt from liability in another. Hence this branch of interstate commerce was being subjected to such a diversity of legislative and judicial holding that it was practically impossible for a shipper engaged in a business that extended beyond the confines of his own state, or a carrier whose lines were extensive, to know, without considerable investigation and trouble, and even then oftentimes with but little certainty, what would be the carrier's actual responsibility as to goods delivered to it for transportation from one state to another.

The Cummins amendment to section 20 of the act to regulate commerce, approved March 4, 1915, prohibits in connection with interstate shipments any limitation of the right of the shipper, in the case of loss, damage, or injury caused by the carrier, to recover the full value of the property transported, except where goods are

hidden from view and the carrier is not advised as to their character. The effect of the decision in the *Croninger Case, supra*, was to lessen the liability of carriers in those states where contracts of limited liability had been held void. The Cummins amendment removed this effect in such states and increased the liability of the carriers in the states where the limitations on the amount of the recovery had been held valid.

It has been the practice of the carriers throughout the United States to fix standard values for the different kinds of live stock, which applied in connection with the standard or base rate. These were supposed to represent a fair average of the actual values and to control where the contracts for limited liability were valid. Where a shipper refused to sign the contract fixing this value or where a higher value was declared, provisions were made for an increase in the rate to be charged. However, as in the greater number of the states the shipper could recover the full value of his property little attention was given to these standard or basic values prior to the decision in the *Croninger Case, supra*, and the carriers generally received rates based on the standard value only.

Since the Cummins amendment requiring carriers to assume full liability on interstate shipments, they insist on their right to increase charges when the value is higher than the average value. So that this standard value is of greater importance now than heretofore. It is also of importance that such values should not differ in different sections of the country, so that the owner of property transported from one to another classification territory may not be subjected to diverse regulations. The value of a particular animal is not affected by crossing the line from one to another classification territory and such animals of a value above the standard or basic value should have a uniform rating commensurate with the excess value. These standard values as they now exist, with the values asked in this proceeding, are as follows:

Animal.	Western.	Official.	Southern.	Proposed.
Stallions.....	\$150	\$250	\$150	\$200
Jacks.....	150	250	150	200
Mares.....	150	250	100	200
Horses.....	150	250	100	200
Mules.....	150	250	100	200
Colts under 1 year.....	75	.....	50	100
Mare and colt together.....	.....	.....	100	.....
Bulls.....	75	150	30	150
Cows.....	50	100	30	150
Steers.....	50	75	30	150
Yearlings.....	.....	.....	15	.....
Fat calves.....	20	25	5	75
Stock calves.....	10	5	5	75
Fat hogs.....	15	25	5	50
Stock hogs.....	15	5	5	50
Goats.....	5	10	5	50
Sheep.....	5	10	5	50

Basic rates being fixed with reference to these values, such standard of value should not be higher than the actual value of the average live stock transported, and higher valued animals may properly take rates in excess of those for such average live stock. In considering the question of minimum weights, carload shipments were not involved, for on such shipments actual weights control. The question of the standard value at and below which all live stock take the same rates for the same movement involves the fact that such value should be applied to all live stock whether the shipment be in carloads or in less than carloads. The benefits of uniformity, and in order that the average animal shall not be required to pay transportation rates based upon values in excess of the actual value of such animals, present reasons why the higher valued blooded animals should not fix the standard. In *Iowa Railroad Commissioners v. A., T. & S. F. Ry. Co.*, 36 I. C. C., 79, 85, we prescribed minimum values on carload shipments. The value of an animal is not affected by the number of animals shipped in a car. Uniformity is desirable, and the evidence on this record justifies a finding that the minimum values prescribed by us in that case are reasonable. Upon the facts we find that the standard or basic values shown in the following table are reasonable:

Each horse or pony (gelding, mare, or stallion), mule, jack, or jenny.	\$150
Each colt under 1 year old.....	75
Each ox, bull, or steer.....	75
Each cow.....	50
Each calf.....	20
Each hog.....	15
Each sheep.....	5
Each goat.....	5

and that the application of any lower than the foregoing basis of values is and for the future will be unreasonable. Any higher basic values now fixed by any of the defendants may and should properly be conformed to the standard valuations here prescribed as reasonable.

Official classification No. 43, effective January 1, 1916, page 214, item 17, provides in substance that when animals of different values are included in one less-carload shipment the charges on the entire shipment shall be at the rate applicable to the highest valued animal. This provision was not in the classification when this case was heard, but was called to our attention by complainants in answer to a request addressed to the interested parties to state how far tariff changes made subsequent to the hearing and following the passage of the Cummins amendment had affected the issues. There appears no reason why a lower valued animal in a less-carload shipment should take the rate applicable to one of higher value, merely because both are shipped in the same car at the same time. The shipper

using two cars would get a rate based on the actual value of his cheaper animal while under this provision if he used only one car he would be compelled to pay on each the rate based on the higher valued animal. We, at this time, express our view that the rule embodied in the item referred to is unreasonable; but, as no hearing has been had on the specific question, we shall enter no order requiring its cancellation. As at present advised we are of the opinion that defendants should cancel this item.

PERCENTAGE INCREASE IN RATES FOR ANIMALS OF A VALUE GREATER
THAN THE STANDARD.

To not correctly declare the value of an animal shipped in interstate transportation, when valuation affects the rate, is a violation of the act to regulate commerce. Registered pedigreed animals have a widely differing market value, which in most cases exceeds the value of an ordinary animal of the same kind. By provisions in the several classifications rates are increased for these higher values by certain percentages. In the southern classification this percentage is 5 for each additional 100 per cent, or fraction thereof, in the value; in the western, the rate increases by 2 per cent for each additional 50 per cent or fraction thereof in value; while in the official the increase is 5 per cent for each additional 50 per cent or fraction thereof in value. Obviously there is no reason why rates should increase in the different classification territories by different percentages for the same increases in value.

Complainants describe some 25,000 less-than-carload shipments of live stock. On these shipments the loss and damage claims were nominal, and considered merely as an insurance for the increased hazard resulting from increased value the addition to the basic rate of 2 per cent thereof for each additional 100 per cent, or fraction, in value above the standard value would amply protect the carriers. Complainants propose this rate of increase and insist that the increased rates should exactly measure the increased hazard. In support of this contention the case of *Kansas City S. R. Co. v. Carl*, 227 U. S., 639, 653, is cited. In that case the court was discussing contracts which, under the law then in force, might properly limit recovery for loss to an amount less than the actual value of the commodity. Such limitations since the passage of the Cummins amendment are unlawful. In *In the Matter of Released Rates*, 13 I. C. C., 550, we were discussing principles not unlike those decided in the *Carl Case*, *supra*. While there is language in the opinions of the court and of this Commission which, when separated from the context, tends to support the contention of complainants, it can not be said that in either case cited was it intended to hold that in determin-

ing relative rates on the more valuable of two animals of the same species this Commission is limited to a consideration of the one factor of insurance against the increased hazard resulting from the higher value. We had occasion to discuss this question in *Iowa Railroad Commissioners v. A., T. & S. F. Ry. Co.*, *supra*, where, at page 84, we said:

The carrier only "insures" the property which it receives for transportation. It is, strictly speaking, not an insurer at all, but a bailee for hire, which, in that capacity, has statutory as well as common-law obligations for the safety of property committed to its charge. Cases may arise where elements other than the amount of damages which might be recovered, as, for example, the degree of care required and the value of the service to the shipper, would have a substantial bearing upon the reasonableness of rates graded according to value, as well as of other rates.

As was said by the Supreme Court in *N. P. Ry. v. North Dakota*, 236 U. S., 585, at 599:

"There are many factors to be considered—differences in the articles transported, the care required, the risk assumed, the value of the service, and it is obviously important that there should be reasonable adjustments and classifications."

This proceeding relates largely to questions of classification, and the facts of record justify the Commission in doing what the carriers have neglected to do; that is, establish just and reasonable uniform classifications, regulations, and practices. The establishment of such reasonable classifications, regulations, and practices should precede the determination of the measure of the rates. The Cummins amendment presents a new condition the exact effect of which upon loss and damage claims can not be definitely determined at this time. There are conditions surrounding the transportation of valuable blooded live stock which differentiate such transportation from that of ordinary stock. In view of these facts, and at least until the classification rules and regulations which we prescribe in this proceeding are tested, we do not feel that we should, in prescribing rates on the higher valued animals, by amounts in excess of the basic rates, consider only the greater insurance risk as determined by the amount of loss and damage claims which past experience indicates will result from the transportation of the more valuable animals.

The percentages by which the basic rates are increased for additions to the value above the standard values in the official and southern classifications result in the application of unjust and unreasonable rates and charges on the higher valued animals. Such percentage increase in the western classification is, we think, more than sufficient to protect the carriers for the greater risk assumed by reason of increased values. There are no differentiating circumstances or conditions in the three classification territories justifying varying increases above basic rates for increased values.

Applying the principles stated to the facts of this record we are of opinion and find that defendants' rates for the transportation of
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any of the animals named in the foregoing tables which are increased for additions above the standard values applicable in connection with the basic rates by more than 2 per cent for each 50 per cent, or fraction thereof, of additional value are and will for the future be unreasonable.

Much of the testimony of the defendants was directed to the claim that existing rates are not sufficiently high. As has been stated, reasonable classifications and rules should be established independently of the rates. As the carriers have heretofore generally received rates based only on the standard value, and will now get higher rates for the more valuable animals based on their actual value, it is not believed that the adjustments which we require in this proceeding will upon the whole result in materially reducing the revenues of the carriers. When reasonable and uniform classifications with reference to basic values and minimum weights are in force and have been tested, it can then be better determined whether the rates are properly adjusted. This record justifies the conclusion that the reasonable classification rules and regulations herein prescribed will yield fair returns under existing rates.

ATTENDANTS.

The experience of the shippers who testified is that for a number of years they have shipped live stock in less than carloads and that attendants on such shipments are not necessary. Witnesses for the defendants do not contend to the contrary. From actual shipments shown of record it appears that frequently the additional expense to the shippers in paying such attendants nearly equals the freight charges on the shipments. The tariffs of the defendants vary as to the provisions relating to attendants, the three classifications being different, and some of the individual roads construe their present tariffs as requiring, others as permitting, attendants. We find and conclude that provisions compelling shippers to provide attendants for less-than-carload shipments of live stock are and will for the future be unreasonable, and will order the defendants to cancel all such provisions. The record shows no shipments of vicious animals, but such may be shipped. At times a shipper may desire to accompany a very valuable animal. For these reasons there are no objections to uniform provisions in the classifications and tariffs providing in unambiguous language that shippers may at their option and expense furnish attendants who, upon paying full fare in both directions, shall be permitted to accompany shipments of live stock in less than carloads. The shipper's interest will, if an attendant be necessary, induce him to provide one and a tariff merely permissive will be all that is required to protect both shipper and carrier.

RATES ON LIVE STOCK CRATED.

When calves are crated they are transported in western classification territory at one and a half times first class at a weight of 500 pounds, the official classification provides a rate of three times first class at actual weight, while in southern classification the weights vary and the rates are the same as on cows. The following table shows the different classification ratings and the existing weights on small animals, and those which complainants ask:

Animal (crated).	Western (1½ times 1st class).	Official (3 times 1st class).	Southern (locals of roads).	Proposed (1st class)
	<i>Pounds.</i>	<i>Pounds.</i>	<i>Pounds.</i>	<i>Pounds.</i>
Calves less than 1 year.....	500	(1)	175	500
Calves over 1 year.....	500	(1)	500	500
Hogs.....	(1)	(1)	250	250
Sheep and goats.....	200	(1)	175	200
Lambs.....			100	200
Pigs.....			125	250

¹ Actual weight. Actual weight signifies actual gross shipping weight.

These small animals when shipped in crates less than carload do not vary greatly in weight or value in the different territories, and there is every reason why the ratings, weights, values, and regulations applied to their shipment should be uniform throughout the country. A crated animal moving at the same weight and with the same minimum value of an animal of the same species shipped uncrated should take no higher rate because of the fact that it is crated. The transportation incidentals which make up the cost of service are generally less and the value of service is no greater on the crated animal than on one of equal standard weight and value shipped uncrated. The carriers may properly provide for minimum weights and standard values the same as hereinbefore found reasonable, but we are of the opinion and find that rates on crated animals in excess of rates now and contemporaneously maintained on animals shipped uncrated are and for the future will be unjust and unreasonable. An order to that effect will be entered. A tariff requirement that small animals must be crated for shipment is not unreasonable, but defendants should make such requirement uniform.

INVESTIGATION AND SUSPENSION DOCKET No. 783.

TRANSIT AT KANSAS POINTS.

Submitted May 15, 1916. Decided June 30, 1916.

Proposed restriction of respondents' transit arrangement now in effect at Atchison and Leavenworth, Kans., on grain products and grain, drawn from Omaha and South Omaha, Nebr., and Council Bluffs, Iowa, and reshipped to Mississippi River and points east thereof, found to be justified under the circumstances of this case. Order of suspension vacated.

Henry G. Herbel and Fred G. Wright for Missouri Pacific and St. Louis, Iron Mountain & Southern railways.

William S. Washer, W. B. Lathrop, and Harry L. Sharp for protestants.

REPORT OF THE COMMISSION.

MEYER, *Chairman*:

Missouri Pacific-St. Louis, Iron Mountain & Southern railways' joint tariff I. C. C. A-2907, containing rules and regulations governing transit arrangements on the lines of those carriers, provides in item 120 that grain from Council Bluffs, Iowa, Omaha and South Omaha, Nebr., may be given transit at Atchison and Leavenworth, Kans., and the grain or product thereof forwarded to Kansas City, Mo., or to "points beyond," without restriction as to destination, on the proportional rates in effect from Council Bluffs, Omaha, or South Omaha, to Kansas City or points beyond. The latter, it will be important to note, are inclusive of St. Louis, Mo., and points east of the Mississippi River and also points in Mississippi Valley territory. By item No. 120-A, in supplement No. 1 to the tariff mentioned, the supplement having been published to become effective January 26, 1916, the respondents proposed to restrict the arrangement described to traffic destined to specifically indicated points. Upon protest of shippers the Commission suspended the operation of the schedules until May 25, 1916, and by subsequent orders until November 25, 1916.

The essential effect of the proposed change is not to cancel, but rather to restrict and modify the present transit arrangement on grain moving under proportional rates from Omaha, South Omaha, and Council Bluffs to and through Mississippi River crossings. Not all of the grain and grain products now entitled to transit at Atchison and Leavenworth would be affected by the proposed restriction of the arrangement, but only that moving to St. Louis and points east

thereof to which through rates are specifically published or which base on the Mississippi River, and to Mississippi Valley points. The arrangement would still be available on traffic to Kansas City proper and to numerous points beyond Kansas City situated on the Missouri Pacific-Iron Mountain system; to points on lines of connecting carriers to which through rates are published and the traffic handled through Kansas City; and to Mississippi River crossings south of St. Louis.

For several years grain and grain products from the Missouri River markets, Omaha to Kansas City, inclusive, have moved to the Mississippi River and points east thereof on proportional or reshipping rates. These rates are the same from both upper and lower Missouri River markets, being on wheat and wheat products 9 cents per 100 pounds, and on corn and corn products 8 cents.

The short-line distance from Omaha to the nearest Mississippi River crossing, Burlington, Iowa, is about 290 miles. The Missouri Pacific and Wabash railways do not reach any of the Iowa crossings but operate from Omaha to St. Louis, between which points the distance via the Missouri Pacific lines is 486 miles as compared with the short-line distance of 290 miles from Omaha to Burlington. If the Missouri Pacific is to transport grain from Omaha to Mississippi River crossings and to points east thereof, it must transport it over its longer line to St. Louis and equalize the proportional or reshipping rates applicable over the shorter lines from Omaha to the Iowa crossings.

There is a considerable grain-producing area in Kansas which is tributary to Atchison and Leavenworth in common with Kansas City. The local rates from portions of southern Nebraska to Atchison and Leavenworth are likewise such as to permit the movement of grain to those points, but territory in Nebraska on the line of the Union Pacific and north of the Platte River is, by reason of the transportation facilities, tributary to Omaha, South Omaha, and Council Bluffs.

In the year 1911 there was a failure of the grain crop in Kansas and the respondents were besought by millers and shippers at Atchison and Leavenworth to aid them in securing a necessary supply of grain by extending the territory from which they could draw grain and reship it, or the product, under the proportional or reshipping rates from the Missouri River to the Mississippi River crossings and to points east thereof. The practical way to do this was to permit transit at Atchison and Leavenworth on grain grown in the territory which, roughly speaking, lies north of the Platte River in Nebraska and which, as indicated, ordinarily moves to and through Omaha, South Omaha, or Council Bluffs. Therefore, by a tariff effective February 1, 1912, the respondents extended the transit arrangement

at Atchison and Leavenworth to grain moving from Council Bluffs, Omaha, and South Omaha, under proportional or reshipping rates, to Kansas City and points beyond, which, as stated, is inclusive of St. Louis; points east thereof, and Mississippi Valley territory.

Respondents' witness testified that this was purely an emergency measure to assist the Atchison and Leavenworth shippers in procuring grain which they could not otherwise have procured because of the crop failure in Kansas and was not done with any purpose or desire to induce the operation of transit-using industries at those points; that it was unusual because in contravention of the traditional policy of not granting transit at Missouri River points under the proportional rates applying therefrom to the Mississippi River and territory east thereof. The witness further testified that since the transit provision at Atchison and Leavenworth was an emergency measure it would ordinarily have been canceled at the end of the season, or, at least, within a reasonable time and upon reasonable notice, but through oversight this was not done, nor were any steps to this end taken until a tariff proposing to withdraw the arrangement was filed to become effective February 6, 1914, but was suspended. At the hearing in that case the respondents offered no justifying evidence, but stated that they were endeavoring to reach an agreement with the shippers affected. The schedules proposing to withdraw the service were required to be canceled, but no order was made requiring its maintenance for any future period. *Transit Privileges at Atchison and Leavenworth, Kans.*, Investigation and Suspension Docket No. 376.

The reason for respondents' failure to defend at the former hearing, as their witness now testifies, was due to the fact that the interested shippers represented to them at that time that a great deal of grain had been contracted for upon basis of the transit arrangement; that the proposed withdrawal came in the midst of the grain-shipping season; and that, inferentially, they would therefore be subjected to loss and injury. In view of this situation, respondents' witness testified, the shippers were informed that the service would not be withdrawn at that time but that it would be withdrawn later. Since that time the respondents have orally advised the shippers of their intention to withdraw the service.

The protests addressed to the Commission by certain shippers in January of this year, upon the publication of the item here under suspension, assert that the parties then had contracts outstanding based on the transit arrangement and that loss and irreparable injury would result if the proposed withdrawal should be permitted to become effective. It thus appears that the same reasons, substantially, are urged upon the respondents and the Commission for

the continuance of the arrangement and against its withdrawal that were urged on the former occasion of its proposed withdrawal. Respondents assert, however, that the situation is now different in this respect; that the plea of insufficient notice no longer avails the protestants. They say also that some of the larger shippers have since urged that if the arrangement is to be withdrawn, such withdrawal be made at some time prior to the 1st of July, rather than after that time, because the grain-shipping season begins then.

The short-line distance from Kansas City to St. Louis is 277 miles via the Wabash Railroad. The Missouri Pacific distance is not substantially greater, being but 282 miles. The distance via the Missouri Pacific from Omaha to Kansas City is 204 miles, making the through distance, Omaha to St. Louis, 486 miles. The distance via respondents' lines from Omaha to St. Louis being so much longer than via the direct lines from either Kansas City or Omaha to Mississippi River crossings requires of the respondents a much greater service of transportation than is performed by the direct lines and consequently yields relatively less revenue.

All grain from Omaha moves to the lower Missouri River crossings, including Atchison and Leavenworth, on a proportional rate of 5.5 cents. If given transit by respondents at the latter points and subsequently reshipped to the Mississippi River or east thereof, the proportional rates from Omaha of 9 cents or 8 cents, according to the commodity, become applicable and the grain or the product must therefore be forwarded from the transit point on the balance of such proportional rates. That is to say, to emphasize the situation, upon all wheat and corn moving directly from Atchison, Leavenworth, or any other Missouri River point to Mississippi River crossings, the full proportional rates are 9 and 8 cents, respectively. No transit on grain moving under these rates from Omaha, South Omaha, or Council Bluffs is allowed by respondents at any Missouri River point except Atchison and Leavenworth, so that when allowed at those points the grain or the product must still be transported from a Missouri River point to a Mississippi River point, but instead of earning the full proportional rates respondent must transport it at the balance of such proportional rates, i. e., 3.5 cents on wheat and wheat products, or 2.5 cents on corn and corn products. This respondents characterize as being exceedingly thin and not "living revenue."

The local rates from Omaha to St. Louis are, on wheat and wheat products, 14 cents per 100 pounds, and on corn and corn products, 13 cents per 100 pounds. Transit is permitted under these rates.

It was testified that ever since the present arrangement had been in effect at Atchison and Leavenworth it had been the cause of complaints and protests from other markets, particularly from Kansas

City shippers, who have complained that the arrangement discriminated against that point, and have asked the installation of like services there. Respondents express the fear that if the situation remains unchanged they will be confronted with a formal complaint from the latter place, and assert that if they are forced to establish a similar arrangement at Kansas City, it will cause a demoralized and discriminative condition with respect to the grain rates from that point, in this, that in the extension of the transit arrangement to Kansas City under the proportional rates lies the possibility of defeat and evasion of the legal rate on large quantities of grain forwarded from that point to the Mississippi River crossings.

Upon the question of discrimination, one of the protestants engaged in the grain business at Kansas City, who makes use of the transit arrangement to store and hold grain at Leavenworth, while declaring that there was no general demand at Kansas City for transit on grain from Omaha, admitted that "on the face of it" the existing situation does discriminate against Kansas City. He stated:

Trying to be fair to everybody, I think in some ways Kansas City is entitled to the same transit. Their proportional rates from Kansas City are the same as from Leavenworth. The Omaha market enjoys a very favorable rate adjustment to the Mississippi River, to the southeast, to Arkansas, Louisiana, east of the Mississippi River, and the only way that rate adjustment can be equalized at all is by granting transit at Kansas City as well as at Leavenworth and Atchison.

Protestants seek to discredit the reason assigned by respondents for the establishment of the transit arrangement in 1912 by showing that prior thereto the Chicago, Rock Island & Pacific and Chicago, Burlington & Quincy railroads permitted transit at Atchison and Leavenworth on grain originating at Omaha when destined to St. Louis and points beyond via those lines. Under the Rock Island and Burlington transit arrangements, one or both, as they at present exist, substantially the same destination territory is open to protestants as under the Missouri Pacific tariff, except that the former do not make the arrangement available to grain destined to Arkansas and Louisiana, to which territory it is, however, not proposed to be withdrawn by the Missouri Pacific. One or more of the protestants formerly used the transit arrangement in effect on the Rock Island and Burlington, but discontinued the use thereof after the arrangement was established by the Missouri Pacific. The arrangement on these lines seems to be not wholly satisfactory because not so broad as the Missouri Pacific arrangement and because the routing via the Rock Island is less direct and traffic via the Burlington is subject to switching charges at Atchison and to a bridge toll except on grain milled in transit.

It appears from all the evidence that there is considerable grain shipped under the proportional rates to Mississippi River and points east thereof. Although the record does not disclose what proportion such shipments constitute of all grain and grain products shipped from the transit points to territory that would be affected should the proposed restriction of the arrangement become effective, it does appear that protestants obtain approximately 40 to 50 per cent of their supply of grain in the Omaha market, and all of them ship into the territory affected, to St. Louis, and points beyond.

The wheat grown in Nebraska possesses different glutinous properties from that obtainable in the lower Missouri River markets, and the Omaha market is said to be relatively lower than the Kansas City market. The millers of flour at Atchison and Leavenworth, being able under the transit arrangement to obtain the same kind of wheat as the Omaha and other Nebraska mills, manufacture to some extent a similar grade of flour and market it in eastern markets in competition with the Nebraska mills. Protestants assert that in order to compete successfully with the Nebraska mills they must buy Nebraska wheat on the same basis as the latter, and they can not continue to do this if the transit arrangement is restricted as proposed. The Leavenworth mill has been in the flouring business for 12 years, however, and throughout that time has obtained its wheat from the same original sources, viz, in Kansas City and in the states of Kansas and Nebraska. Its sales and distribution are made through brokers, and during all this time its sales, although to different customers, have been in the same general territory and consuming markets, i. e., Boston, New York, Philadelphia, Pittsburgh, Columbus, Cincinnati, and Louisville. The Atchison mill gets into the same markets.

To some extent the Leavenworth miller desiring to purchase grain at the sources of supply in the country is handicapped by commercial conditions. The country grain shipper has two methods of selling his wheat. He may send it to a terminal market consigned to some grain dealer who sells it on sample, or he may accept bids sent out by grain buyers for acceptance within a specified time. Leavenworth is not a primary grain market, and, although a Missouri River point, reached by the Santa Fe, Burlington, Rock Island, and Missouri Pacific railways, and not far distant from Kansas City, seems not to be a favorite market for consignment by the country shipper who prefers to consign to a dealer at a primary market. The Leavenworth miller therefore has difficulty in obtaining grain on bids. It was testified that the variation in the quality of the wheat and the necessity of inspection to insure the quality needed make it desirable for the Leavenworth miller to obtain his needed supply largely at

such primary markets as Omaha and Kansas City. Millers at Kansas City, however, seem to be able to obtain the very wheat that the Leavenworth miller says he must have in order to compete with the Nebraska millers; in any event, being located at a primary market having an available supply, they are not obliged to go to Omaha for wheat, and thus have a commercial advantage over the Leavenworth miller. The experiences of the Atchison miller are similar to those of the Leavenworth miller. It is admitted that market fluctuations have more to do with the price obtained for flour than does the cost price of the wheat.

The Atchison elevator handles primarily corn and oats under the transit arrangement. Its witness testified that 300,000 bushels of grain constituted 10 per cent of its handlings in the past year, from which we compute that 401,000 bushels of Omaha corn said to have been handled on transit would constitute approximately 13 per cent of its handlings. Not all of this corn, moreover, moved to territory that would be affected if the transit arrangement were restricted as proposed. This concern merely transfers the grain; it does not mill any of it and does not care to clean it. Its principal operation seems to be the transfer and storage of grain purchased by its customers for future deliveries.

A Kansas City grain firm has been handling grain through an elevator at Leavenworth since early 1912, having commenced operations soon after the Missouri Pacific transit arrangement became effective, and its witness testified that it was largely induced to do so because of the establishment of the same. It has handled the bulk of its Leavenworth business on basis of the transit sought to be canceled and is the largest user of space in the Leavenworth elevator. It handles about 70 per cent of everything that goes through that elevator, and has a virtual monopoly in its use, although it had, during the previous summer, been used by other shippers when business was light. It is operated as a public elevator and might be used by other shippers at any time if, as witness stated, "they can find an empty bin." A portion of the grain handled through this elevator by the Kansas City firm has been shipped to points in Arkansas, Louisiana, and Texas, to which it is not proposed to withdraw the transit service.

The protestants urge the maintenance of the present unrestricted arrangement on various grounds. All are in competition to some extent with Kansas City and Omaha, and the millers, as distinguished from the elevator operators, are also in competition with interior Nebraska and Iowa millers and with large flour milling points such as Minneapolis, Minn., Springfield, Mo., and Sioux City, Iowa. It is plain from all the evidence, however, that the competition which

protestants meet is not limited to that of Kansas City or Omaha. The Leavenworth mill developed its business and met substantially the same competition that it now meets before it had the benefit of transit on Omaha grain, and its representative admits that were the transit arrangement canceled he would nevertheless be, in so far as transit is concerned, on a parity with Kansas City, which does not have the benefit of a like arrangement but does have certain trade and commercial advantages.

The more favorable location of Omaha with respect to the sources of supply of grain largely used by Atchison and Leavenworth millers is a natural advantage which this Commission may not properly require the carrier to equalize in freight rates. The location of both Omaha and Kansas City has made those points primary grain markets at which the development of facilities for the receiving, marketing, distribution, and shipping of grain are superior to those of Atchison and Leavenworth. They have thus become more attractive markets for the country shipper. These are admitted to be commercial advantages to offset which protestants assert they need the present transit arrangement.

The maintenance by respondent at Atchison and Leavenworth of a transit arrangement on grain drawn from Omaha, while denying the same to Kansas City, apparently makes for unjust discrimination against the mills and elevators at the latter gateway, which the proposed restriction of the transit arrangement, should it become effective, will serve to remove. It may reasonably be assumed that unless the transit arrangement at Atchison and Leavenworth is withdrawn it must ultimately be extended to Kansas City if not to other points. The relative situation as between all lower Missouri River crossings is not developed upon the record in this case, which does not support the contentions of protestants that they should continue to enjoy the unrestricted transit arrangement, which regardless of the reasons attending its establishment, has undoubtedly given them a substantial rate advantage over Kansas City.

The testimony of respondents' witnesses that the establishment of the arrangement was an emergency measure for the purpose of relieving the situation of the Atchison and Leavenworth receivers and shippers of grain arising from the crop failure in Kansas and not for the purpose of inducing the location of transit houses at these points is undisputed. The only protestant who claims to have established a business on the fact of this arrangement is the Kansas City grain firm, which has, as stated, enjoyed a virtual monopoly in the use of the Leavenworth elevator. It has not, however, invested any capital in this facility. It was its witness who testified that he did not think there was any general demand for transit at Kansas City; that

as long as he had transit at Leavenworth he was not particularly interested in having it at Kansas City, but that if it were withdrawn at Leavenworth he would make an effort to get it at Kansas City.

Undoubtedly the business of protestants has increased in volume under the transit arrangement, but that fact of itself constitutes no decisive reason for its continuance, unless the rates are fair to the respondents and the arrangement is free from any element of discrimination against other shippers or localities. The arrangement is not one which, upon the facts shown, the respondents could have been required to establish for protestants' benefit, and which they may not continue except at the risk of unjustly discriminating against other shippers and receivers, particularly those of Kansas City.

Considering the facts disclosed as to the competitive situation and that respondents' rates from Omaha, South Omaha, and Council Bluffs to the Mississippi River are forced by competition and apparently yield a relatively low revenue, we are of the opinion and find that respondents have sustained the burden cast upon them by the statute to show that the proposed restriction of the transit arrangement is just and reasonable.

An order will be entered vacating the suspension.

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No. 8011.¹

PROCTER & GAMBLE DISTRIBUTING COMPANY
v.
ALABAMA & VICKSBURG RAILWAY COMPANY ET AL.

Submitted January 10, 1916. Decided June 27, 1916.

Upon complaint that rates on soap, soap powder, cleansing powder, and lard substitute from Ivorydale, Ohio, and St. Bernard, Ohio, suburbs of Cincinnati, Ohio, and Kansas City, Mo., and Kansas City, Kans., to points in the state of Louisiana are unreasonable, unjustly discriminatory, and constitute departures from the rules of the fourth section of the act; *Held:*

1. That the finding of the Commission in *Through Rates to Points in Louisiana and Texas*, 38 I. C. C., 153, disposes of the allegations herein respecting the reasonableness of the rates involved and the allegations that they exceed the aggregate of the intermediate rates.
2. That the matter of rates alleged to be in contravention of the long-and-short-haul rule of the fourth section be reserved for further consideration.
3. That existing rates from Cincinnati unjustly discriminate against that point in favor of Chicago, Ill.
4. That readjustments of rates in response to findings of the Commission in *Through Rates to Points in Louisiana and Texas* may make an order to remove discrimination unnecessary. Complaint dismissed without prejudice.

William McGuffey for Procter & Gamble Distributing Company.

Frank Van Slyck for Globe Soap Company.

F. H. Wood, J. M. Souby, T. J. Norton, George Thompson, Henry G. Herbel, and Fred G. Wright for Houston & Shreveport Railroad Company, Morgan's Louisiana & Texas Railroad & Steamship Company, and other carriers.

REPORT OF THE COMMISSION.

MEYER, Chairman:

Complainant in Docket No. 8011 is engaged in shipping soap, soap powder, and lard substitute to various interstate points from Ivorydale, a suburb of Cincinnati, Ohio, Kansas City, Mo., and Kansas City, Kans., both hereinafter referred to as Kansas City.

It alleges that rates of defendants on the above commodities from Ivorydale and Kansas City to local and junction points in the state of Louisiana on the lines of the defendants are unreasonably high for the service performed; that through rates in question from and to the points named are in many cases higher than the aggregate of

¹ The proceeding also embraces complaint in No. 8011 (Sub-No. 1), *Globe Soap Company v. Alabama & Vicksburg Railway Company et al.*; and Portions of Fourth Section Applications Nos. 696, 629, 689, and 461.

the intermediate rates; that defendants make a greater charge for a shorter than for a longer distance over the same line or route; that they unjustly discriminate against Ivorydale and Kansas City in favor of other localities; and that by reason thereof complainant has been and is being subjected to the payment of freight charges which were and are unreasonable, in violation of section 1 of the act, and unjustly discriminatory, in violation of sections 3 and 4 of the act.

Complainant in Sub-No. 1 is engaged at St. Bernard, Ohio, a suburb of Cincinnati, in the manufacture and shipment of soap, soap powder, and cleansing powder. Its allegations are similar in all essential respects to those made by complainant in Docket No. 8011, except that no complaint is made with respect to rates from Kansas City. Reparation is asked in this complaint.

Soap, soap powder, and cleansing powder take the same rates; and Ivorydale and St. Bernard are on the same rate basis as Cincinnati, and Cincinnati rates, as used herein, will include the rates from the Ohio shipping points of both complainants.

There were assigned for hearing in connection with these cases those portions of Fourth Section Applications Nos. 461 and 689, filed by F. A. Leland, agent, by which authority is sought to continue to charge for the transportation of lard substitute, soap, and soap powder from Cincinnati and Kansas City to points in Louisiana named in Leland's I. C. C. No. 1077 through rates that are higher than the aggregate of the intermediate rates; and those portions of Fourth Section Applications Nos. 696 and 629, filed by F. A. Leland, agent, by which authority is sought to continue rates on soap, soap powder, cleansing powder, and lard substitute from Cincinnati and Kansas City to points in Louisiana named in Leland's I. C. C. No. 1077 that are lower than rates contemporaneously applicable on like traffic to intermediate points in Louisiana named in the tariff.

Complainant in No. 8011 submitted elaborate exhibits showing in detail through rates on soap, soap powder, and lard substitute from Cincinnati and Kansas City to representative points in Louisiana compared with the aggregate of the intermediate rates from and to the same points. The exhibits show, generally, that the through rates are materially higher than the aggregate of intermediate rates. It is not deemed necessary for the purposes of this case to set out in detail the specific rates with respect to which complaint is made. It was stated on behalf of complainant that the allegation in the complaint with respect to the unreasonableness of the through rates was mainly predicated on the fact that they were higher than the combination of intermediate rates via the Mississippi River crossings from Memphis, Tenn., south to New Orleans, La., and other junction points via which the through rates are made.

It also appears that the allegation of unjust discrimination rests in part upon the same fact. It was pointed out that a shipper of soap at New Orleans or other crossings can ship in and out on lower aggregate charges than complainant can ship from Cincinnati to the same destinations at the through published rates. It is alleged that in the year 1914 the through rates from Cincinnati to points in Louisiana were materially increased and that the increase of the long maintained preexisting rates was unreasonable. The claim of unreasonableness of the increased rates, however, is based on the fact that they are higher than the combinations.

Complainant in the subnumber adopted the evidence submitted in behalf of the original complainant and stated that the articles here involved are invariably sold at a delivered price and that the freight charges are always borne by the shipper.

The defendants admit that in many instances the through rates from Cincinnati and Kansas City to Louisiana points exceed the aggregate of the intermediate rates contemporaneously in effect between the same points. They stated that they would not submit any evidence to justify such departures from the rule of the statute in these proceedings for the reason that they had submitted their justification for such rates at a previous hearing at St. Louis, Mo., on their general fourth section applications.

Since these cases were submitted, and on February 18, 1916, the Commission promulgated its decision in *Through Rates to Points in Louisiana and Texas*, 38 I. C. C., 153, which involved, among others, Leland's Fourth Section Applications Nos. 461 and 689, portions of which were set for hearing in connection with these proceedings. In that case we found that through rates on interstate traffic, from various points, including Cincinnati and Kansas City, to points in Louisiana and Texas that exceed the aggregate of the intermediate rates from and to the same points had not been justified and the applications for relief were denied. The decision in that case disposes of the allegations in these cases with respect to through rates higher than the aggregate of the intermediate rates and also of the allegations that the existing through rates are unreasonable and unduly discriminatory so far as shipments through the lower crossings are concerned.

We turn now to the allegation that many of the through rates from Cincinnati and Kansas City to points in Louisiana contravene the long-and-short-haul rule of the fourth section. Exhibits filed by complainant show that many of the through rates to more distant points are lower than to nearer points over the same line or route. This is admitted by defendants. In a general way they attempted to justify the departures from this rule of the fourth section by assert-

ing that the rates to more distant points are unduly low, forced by competition beyond their control. Upon request at the hearing the respondents were permitted to file statements showing the disparity in rates between the more distant and intermediate points. Such statements were filed by some of them and in considerable detail they explain why the adjustment is believed by them to be just and reasonable.

The changes in through rates from various interstate points, including Cincinnati and Kansas City, to points in Louisiana, that will necessarily follow from our findings in *Through Rates to Points in Louisiana and Texas, supra*, will doubtless result in the correction of many of the departures from the long-and-short-haul rule of the fourth section. Applications for relief from this rule of the statute with respect to the rates into Louisiana and other states from various points have been heard and submitted in other proceedings, but not yet decided. We have now before us numerous cases involving rates from points on the Mississippi River and other points to points in Louisiana and other states. It is impossible to forecast the readjustment of rates to Louisiana points from various interstate points which may result from these cases. For these reasons we will not in the instant proceedings pass upon the departures from the long-and-short-haul rule of the fourth section herein brought to our attention.

Generally speaking, through rates from all defined territories, both east and west of the Mississippi River to Louisiana points, are based upon the rates from St. Louis. With a few exceptions Kansas City takes St. Louis rates. Rates from Cincinnati are made differentials over St. Louis. Cincinnati is located in what is known as Cincinnati territory with respect to the rates to points in Louisiana. For many years Cincinnati and Chicago have taken the same differentials over St. Louis to one part of Louisiana; and to the other part of Louisiana, most influenced by Mississippi River combinations, Cincinnati has taken a smaller differential than Chicago. Based on increases following the original *Five Per Cent Case*, 31 I. C. C., 351, and on the fact that the through rates from central freight association territory points to Louisiana points as a rule are divided by allowing locals to East St. Louis, Ill., we permitted the Louisiana carriers to increase rates from central freight association territory points accordingly; supplemental orders of November 28 and December 23, 1914, in *The Five Per Cent Case*.

It is asserted by the complainant that had the base rates from St. Louis territory been increased, and the differentials allowed to remain unchanged, the through rates from all territories would have been increased accordingly, and the territorial groupings and commercial relativity of all territories would have been maintained;

that this was not done; that rates from St. Louis territory were not changed, nor were the Chicago territory differentials increased; that the differentials from Cincinnati and other territories were increased, which disturbed the relation between Cincinnati, St. Louis, and Chicago; and that this has resulted in undue preference within the meaning of the third section of the act.

After the differentials prescribed in the supplemental order of December 23, 1914, in *The Five Per Cent Case* became effective, the differentials Chicago and Cincinnati over St. Louis on traffic to Louisiana points became the following, in cents per 100 pounds, on the classes of the western classification:

	1	2	3	4	5	A	B	C	D	E
Chicago.....	20.0	16.0	12.0	10.0	7.0	9.0	8.0	7.0	6.0	5.0
Cincinnati.....	21.9	17.6	13.2	10.8	7.7	9.7	8.5	7.5	6.5	5.5

At St. Louis and Chicago there are competitors of complainants, and since the increase in the rates from Cincinnati complainants have been required to absorb on the traffic shipped by them the difference in rates, which amounts to one-half cent per 100 pounds. Through commodity rates on soap and soap powder, in carloads, are maintained by defendants from Cincinnati and Kansas City to points in Louisiana. Through commodity rates are also maintained from Cincinnati and Kansas City to the same points on less-than-carload shipments of soap and soap powder, with a few exceptions, not necessary to be separately considered. On soap and soap powder through carload and less-than-carload commodity rates are maintained from Cincinnati and Kansas City to the lower Mississippi River crossings and class or commodity rates are maintained from the crossings to points in Louisiana varying with different destinations. On lard substitutes through class rates are maintained from and to the points named on both carload and less-than-carload shipments. Through class rates are maintained to the lower crossings from both points. From the crossings the rates are class and commodity, varying with the destinations and the route of movement.

It is insisted by the complainants that the discrimination against Cincinnati is clear, since rates from Cincinnati via direct routes through the lower Mississippi River crossings are divided on percentages; and that the traffic via those routes does not traverse central freight association territory. It is also pointed out that the rates from Cincinnati were increased, and the rates from Chicago were not increased, notwithstanding the fact that local rates from Chicago to St. Louis were increased, and that so far as divisions are concerned the situation at Chicago and Cincinnati is substantially similar.

The defendants did not attempt to justify their failure to increase the rates from Chicago territory when rates were increased from Cincinnati. They state that they relied wholly upon *The Five Per Cent Case*. There is nothing in the findings of the Commission in that case that is justification for the defendants to disarrange the relative adjustment of the through rates from Chicago and Cincinnati to Louisiana points which had been maintained for many years. When an important and long standing relation, such as is here involved, is sought to be changed by carriers, justification therefor must be clear and convincing. There is no such justification in this record.

Under the circumstances shown, we are of the opinion that the maintenance of higher through rates from Cincinnati to points in Louisiana than from Chicago to the same points was and is unjustly discriminatory.

Local rates on classes and commodities are generally lower from Cincinnati to the lower Mississippi River crossings than from Chicago, and the combination basis will, therefore, make lower aggregate charges from the former point, via those crossings. The changes to be made in the through rates from both Cincinnati and Chicago may make it unnecessary to issue an order in these cases requiring the defendants to remove the discrimination found to exist.

We emphasize the matter here for consideration by defendants in any readjustment they may make in their through rates. Some changes in adjustments will doubtless be found necessary but they should go no further than the situation absolutely requires, and without any undue or unnecessary disturbance of present relative adjustments.

No showing was made with respect to the reparation asked and none will be awarded. The complaints will be dismissed without prejudice to complainants.

No. 8012.

PROCTER & GAMBLE DISTRIBUTING COMPANY

v.

ALABAMA & VICKSBURG RAILWAY COMPANY ET AL.

FOURTH SECTION APPLICATIONS Nos. 468 AND 461.

Submitted January 10, 1916. Decided June 27, 1916.

Upon complaint that through rates on lard substitute in carloads and less than carloads from Macon, Ga., to points in the state of Louisiana are unreasonable, unjustly discriminatory, and represent departures from the fourth section of the act, *Held*:

1. That the finding of the Commission in *Through Rates to Points in Louisiana and Texas*, 38 I. C. C., 153, disposes of the allegations herein made respecting the reasonableness of the rates, their discriminatory character, and of the allegation that they exceed the aggregate of the intermediate rates.
2. That the matter of through rates in contravention of the long-and-short-haul rule of the fourth section be reserved for further consideration, following *Procter & Gamble Distributing Co. v. A. & V. Ry. Co.*, ante, page 367. Complaint dismissed without prejudice.

Wm. H. McGuffey for complainant.

F. H. Wood, J. M. Souby, T. J. Norton, George Thompson, Henry G. Herbel, and Fred G. Wright for Houston & Shreveport Railroad Company, Morgan's Louisiana & Texas Railroad & Steamship Company, and other carriers.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

Complainant is engaged in shipping lard substitute from Macon, Ga., to various interstate points. It alleges that rates for transportation of lard substitute in carloads and less than carloads from Macon to local and joint stations on the lines of defendants in the state of Louisiana are unreasonably high for the service performed and unjustly discriminatory against the complainant; that the through rates on the commodity named from Macon to many points in Louisiana are higher than the aggregate of the intermediate rates; that to many stations in Louisiana the through rates from Macon constitute a greater charge for transportation for a shorter than a longer distance over the same route; and that by reason thereof complainant has been subjected to the payment of freight charges

that were and are unreasonable, in violation of section 1 of the act, and unjustly discriminatory, in violation of sections 3 and 4 of the act.

There were also assigned for hearing in connection with this case that portion of Fourth Section Application No. 461, filed by F. A. Leland, agent, by which authority is sought to charge for the transportation of lard substitute from Macon to points in Louisiana named in F. A. Leland's I. C. C. No. 1076 greater compensation as a through route than the aggregate of intermediate rates; and that portion of Fourth Section Application No. 468, filed by F. A. Leland, agent, by which authority is sought to continue rates on lard substitute from Macon to points in Louisiana named in Leland's I. C. C. No. 1076 that are lower than rates contemporaneously applicable to intermediate points in Louisiana named in said tariff.

The complainant secured a factory at Macon about the year 1907 because of its location near cotton-producing territory and also because of its favorable situation with respect to rate adjustments. From the Macon plant complainant largely supplies Louisiana trade. In the sale of its product to interior points in Louisiana complainant meets competition from New Orleans, various points in Texas, including Fort Worth, and all meat-packing plants in the general territory.

Complainant filed comprehensive exhibits showing in detail through rates on lard substitute from Macon to representative points in Louisiana compared with the aggregate of intermediate rates from and to the same points. The exhibits show that through rates to many interior Louisiana points on the lines of the defendants are materially higher than the aggregate of the intermediate rates contemporaneously in effect from and to the same points. It is not necessary here to set out the rates with respect to which complaint is made. The complainant stated that its allegation with respect to the unreasonableness of the through rates was based largely on the fact that they are higher than the combinations via the Mississippi River crossings. It also appears that the allegation of discrimination rests upon the same fact. It was pointed out that a shipper of lard substitute at New Orleans or other crossing could ship in and out at lower aggregate charges than complainant could ship from Macon through to the same destination. It is shown that in 1914 the through rates from Macon to points in Louisiana were materially increased. The initial carriers at Macon were approached and complainant was advised that rates had been increased west of the Mississippi River. The increase was not made in the local rates to the crossings but in the differentials over New Orleans.

The defendants admitted that in many instances the through rates were higher than the aggregate of intermediate rates, but stated that they would not introduce any evidence in this proceeding to justify the departures from the rule of the statute for the reason that they had submitted their justification of such an adjustment of rates at a previous hearing on their general fourth section applications with respect to through rates higher than the aggregate of intermediate rates involving generally the whole adjustment of such rates to Louisiana and Texas points from all interstate points.

Since this case was submitted, and on February 18, 1916, the Commission promulgated its decision in *Through Rates to Points in Louisiana and Texas*, 38 I. C. C., 153, which involved, among others, Leland's Fourth Section Application No. 461, a portion of which was set for hearing in connection with this proceeding. In that case we found that through rates on interstate traffic, including that here in question, from various interstate points, including Macon, to points in Louisiana and Texas which exceeded the aggregate of intermediate rates from and to the same points had not been justified by the defendants, and the application for relief was denied. The decision in that case disposes of the allegations in this case with respect to the unreasonableness of the existing through rates and their discriminatory character.

Through commodity rates are maintained on lard substitute from Macon to Louisiana points, except to a few points not necessary to be separately considered. Commodity rates are also maintained to the lower Mississippi River crossings. All rates therefrom are upon a class or commodity basis dependent on the destination and route of movement.

As before stated, it is alleged in the complaint that many of the through rates from Macon to points in Louisiana contravene the long-and-short-haul rule of the fourth section. The exhibits filed by the complainant show that many of the through rates to points a greater distance from Macon are lower than to points a shorter distance from Macon over the same line or route. This is admitted by the defendants, and in a general way at the hearing they attempted to justify these departures from the rule of the fourth section. Statements have been filed by some of the defendants showing in detail the disparity between the rates applicable to farther distant points and those applicable to intermediate points, containing explanations why they consider the adjustment reasonable.

The same situation is presented here as was considered by us in *Procter & Gamble Distributing Co. v. A. & V. Ry. Co.*, ante, page 367. For reasons given in that case the departures from the long-

and-short-haul rule of the fourth section will be reserved for further consideration.

Rates on lard substitute from Macon to Louisiana points now bear and have borne for many years a differential relation to the rates from St. Louis to the same points. The readjustment of rates from Macon as well as from all other interstate points, that are now made differentially over or under the St. Louis rates, may be, as a result of our findings in *Through Rates to Louisiana and Texas, supra*, rearranged. If the existing through rates are withdrawn and traffic is allowed to move on combinations of rates to and from the crossings the differential adjustment with respect to St. Louis now in effect will be to some extent disrupted. The duty of the defendants is to obey the mandate of the statute, and it must be assumed that in the readjustment of the rates they will give due consideration to the long standing relationship that has existed between shipping and receiving points.

This complaint will be dismissed without prejudice.

40 L. C. C.

No. 7183.
NASHVILLE TIE COMPANY ET AL.
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY.

Submitted April 5, 1915. Decided June 23, 1916.

Upon complaint that defendant's rates on crossties and switch ties from points on its Memphis line, its Clarksville & Princeton division, and its Clarksville Mineral branch, to Evansville, Ind., and Louisville, Ky., are unreasonable and unjustly discriminatory; *Held*, That the present rates are just and reasonable except where they represent increases made after this proceeding was submitted. As to the latter, no finding is made.

Barthell, Howell & O'Connor for complainants. .

William Burger and Nelson W. Proctor for defendant.

REPORT OF THE COMMISSION.

HALL, Commissioner:

Complainants are the Nashville Tie Company and Ohio Valley Tie Company, corporations, and the Harris Tie Company, a copartnership, engaged in the manufacture and sale of crossties and switch ties, with their principal places of business at Nashville, Tenn., Louisville, Ky., and Erin, Tenn., respectively. Their complaint, filed August 15, 1914, in substance attacks the rates on wooden cross and switch ties, in carloads, from stations on the Memphis line, the Clarksville & Princeton division, and the Clarksville Mineral branch, respectively, of defendant's railroad, to Evansville, Ind., and Louisville as unreasonable *per se*, and as unduly discriminatory in that the rates "are in no wise proportional according to value to the rates on other forest products."

Many of the rates to Evansville complained of were increased after January 1, 1910, and the burden of justifying such rates rests upon defendant.

The Memphis line extends from Memphis, Tenn., to Memphis Junction, Ky. From this line the Clarksville & Princeton division extends from Princeton Junction, Tenn., to Gracey, Ky., and the Clarksville Mineral branch from Hematite, Tenn., to Pond, Tenn.

Complainants show that their shipments consist in the main of ties inferior to the so-called standard white-oak tie. The wood is not adapted to other uses, and must be treated with preservative.

They also claim that under rates in effect prior to March 18, 1914, a profit was possible, but not under the higher rates to Evansville which then became effective. Upon these facts they base their demand for lower rates on ties than on lumber.

They also show that the increases of March 18, 1914, in rates on ties to Evansville coincided with the opening by defendant of a plant at Guthrie, Ky., for the treatment of ties. This has little relevancy to the issues presented, as defendant's ownership or operation of such a plant can not affect its right and obligation to charge just and reasonable rates.

In general, ties are accorded lumber rates on defendant's line. The lumber rates also apply on logs, heading, and heading material, stave bolts, oak bolts, handle bolts, shingle bolts, shingles, cooperage stock, and other commodities. With few exceptions the rates apply on all varieties of lumber regardless of value.

Defendant states that lumber rates from stations on the Memphis line are very low. Rates from Memphis to Ohio River points have been influenced first by actual and later by potential water competition. The low rates resulting from such competition have been reflected in those from competing points north of Memphis. Moreover, competition with the near-by line of the Illinois Central Railroad is said to have influenced these rates to some extent.

Defendant long maintained lower rates on lumber and logs from southern points to the Ohio River than to intermediate points. Hearing was had upon the application for relief from the long-and-short-haul rule of the fourth section covering this situation, and we held that relief should be granted as to certain traffic and denied as to other traffic. *Lumber Rates from the South to Ohio River Crossings*, 25 I. C. C., 50.

Pursuant to our report in that proceeding defendant filed, effective May 8, 1913, a tariff containing a comprehensive readjustment of such lumber rates. These rates were attacked as unreasonable and unduly prejudicial in *Brown & Sons Lumber Co. v. L. & N. R. R. Co.*, 37 I. C. C., 507. We there held that defendant's increased rates on lumber were "not unreasonable or otherwise in conflict with the act."

It is stated that rates on ties should have been readjusted at the same time as those on lumber, but owing to the pressure of other work this was not done. The increases of March 18, 1914, it is said, were the logical outcome of the lumber readjustment.

Exhibits filed by defendant show that the rates attacked compare favorably with rates on ties maintained by it between other points in the same general territory. It is also shown that these rates are in most instances lower than those resulting from the application of

defendant's lumber mileage scale, which is the groundwork for its lumber rates.

While defending the rates on ties here assailed, defendant's witness stated that there appeared to be certain inequalities and perhaps inequities in the adjustment and that an investigation would be made with a view to rectifying them.

Effective April 11, 1915, defendant revised certain of its rates on ties from the territory of origin to Evansville and Louisville. No protest against the new rates was filed. The table on page 380 outlines the history of rates on ties from representative points of origin to these destinations and shows the corresponding lumber rates as well as the short-line distances. Rates are stated in cents per 100 pounds.

Under the readjustment, rates on ties to Evansville from Curriers and Clarksville, Tenn., and from stations Auburn to Hadensville, Ky., have been reduced 1 cent, while those from stations Hamptons to Princeton Junction, Tenn., have been increased by the same amount. To Louisville rates from stations Clarksville to Big Sandy, Tenn., were reduced 1 cent and a corresponding increase made from stations Routon to Jarrel, Tenn., from all stations on the Clarksville & Princeton division, and from all but six stations on the Clarksville Mineral branch, including the Van Leer spur of that branch. From the remaining six stations on that branch, including one on the Louise spur, the increase was 2 cents.

The effect of the readjustment is, as a whole, to remove inequalities that were objectionable. As a general rule rates on lumber from the southeast are 1 cent higher to Evansville, on the north bank of the Ohio River, than to Louisville and Henderson on the south bank. The readjustment follows this rule except that rates from four stations, Lanark, Rockfield, Petros, and South Union, Ky., are 2 cents higher to Evansville. The average distance from these stations to Louisville is 124.5 miles and to Evansville 147.5 miles. The record does not show that the lower rates to Louisville result in undue prejudice to Evansville.

The Commission has repeatedly held that no higher rates should be charged on ties than on lumber. The present rates on ties are the same as or lower than the corresponding rates on lumber.

Apparently complainants do not urge that white-oak ties should take lower rates than lumber. The value of a commodity is one of many elements to which consideration should be given in establishing rates; but in distinguishing between ties of high and low value, and between ties and lumber, there is no definite line of demarcation, and such differentiation as is asked by complainants is impracticable. *Whitcomb v. C. & N. W. Ry. Co.*, 15 I. C. C., 27, 28; *Northbound* 40 I. C. C.

From—	To Evansville, Ind.										To Louisville, Ky.									
	Dis- tance.	Prior to Feb. 18, 1913.		Feb. 18, 1913.		May 8, 1913.		Mar. 18, 1914, and at time of hearing.		Apr. 11, 1915, and at present time.	Dis- tance.	Prior to Feb. 18, 1913.		Feb. 18, 1913.		May 8, 1913.		Mar. 18, 1914, and at time of hearing.		Apr. 11, 1915, and at present time.
		L.	C.	L.	C.	L.	C.	L.	C.			L.	C.	L.	C.	L.	C.	L.	C.	
	Miles.										Miles.									
	151	10	10	10	10	10	10	11	11	11	121	9	9	9	9	9	9	9	9	9
	140	10	10	10	10	10	10	11	11	11	132	9	9	9	9	9	9	9	9	9
	108	9	9	9	9	9	9	10	10	10	164	9	9	9	9	9	9	9	9	9
	112	8	8	8	8	8	8	10	10	10	168	8	8	8	8	8	8	8	8	8
	122	8	8	8	8	8	8	10	10	10	178	8	8	8	8	8	8	8	8	8
	150	8	8	8	8	8	8	11	11	11	206	8	8	8	8	8	8	8	8	8
	180	9	9	9	9	9	9	11	11	11	236	9	9	9	9	9	9	9	9	9
	188	9	9	9	9	9	9	11	11	11	244	9	9	9	9	9	9	9	9	9
	191	11	11	11	11	11	11	12	12	12	247	11	11	11	11	11	11	11	11	11
	281	11	11	11	11	11	11	12	12	12	357	11	11	11	11	12	12	12	12	12
	121	11	11	11	11	11	11	12	12	12	177	10	10	10	10	10	10	10	10	11
	128	9	9	9	9	9	9	12	12	12	184	10	10	10	10	10	10	10	10	11
	161	10	10	10	10	10	10	12	12	12	207	10	10	10	10	10	10	10	10	11
	132	10	10	10	10	10	10	12	12	12	188	9	9	9	9	9	9	9	9	11
	154	10	10	10	10	10	10	12	12	12	210	10	10	10	10	10	10	10	10	11
	161	10	10	10	10	10	10	12	12	12	217	10	10	10	10	10	10	10	10	11

* No commodity rate published.

C—Time.

L—Lumber.

Rates on Hardwood from Southwest, 32 I. C. C., 521, 529. The reasonableness of rates on low-grade commodities is not to be gauged by the ability or inability of shippers to market their products with profit. *Railroad Commissioners of Montana v. B., A. & P. Ry. Co.*, 31 I. C. C., 641, 644; *Boise Lumber Co. v. P. & I. N. Ry. Co.*, 38 I. C. C., 109, 115.

We are of opinion and find upon the present record that defendant's rates on ties to Evansville and Louisville from the points of origin designated are just and reasonable and are not shown to be unduly prejudicial. The record does not cover increases made after this proceeding was submitted, and no finding is made with respect to rates so increased.

The complaint will be dismissed.

40 I. C. C.

No. 8081.
CHARLESTON & NORFOLK STEAMSHIP COMPANY
v.
CHESAPEAKE & OHIO RAILWAY COMPANY ET AL.

Submitted January 8, 1916. Decided June 30, 1916.

Upon complaint under subdivision (c) of section 6, as amended by the Panama Canal act of August 24, 1912, praying the establishment of maximum proportional rates by rail from Ohio River crossings to the port of Norfolk, Va.; for use in connection with rates of complainant by the boat line which it proposes to operate from Baltimore, Md., and Norfolk to Charleston, S. C., *Held:*

1. The Commission acts only by virtue of powers conferred by the Congress. The power invoked to establish maximum proportional rates is confined to rates "which apply only to traffic which has been brought to the port or is carried from the port by a common carrier by water."
2. The complainant has never acquired or operated any vessel, transportation or terminal facility, or equipment; does not carry property; does not hold itself out to carry property and does not propose to carry property unless and until the Commission shall establish proportional rates by rail to Norfolk which do not exceed the limits indicated by complainant. It is therefore not a common carrier by water within the meaning of the statutory provision invoked. Complaint dismissed.

Frank Lyon and Charles Kimmick for complainant and Freight Adjustment Steering Committee of Charleston, S. C., interveners.

A. E. Singleton for Whitaker-Glessner Company and the Board of Trade of Portsmouth, Ohio, interveners.

R. Walton Moore and Charles D. Drayton for Norfolk & Western Railway Company.

W. S. Bronson for Chesapeake & Ohio Railway Company, Kanawha & Michigan Railway Company, and Hocking Valley Railway Company.

REPORT OF THE COMMISSION.

HALL, Commissioner:

The complainant Charleston & Norfolk Steamship Company is chartered under the laws of South Carolina for the stated purpose of common carriage of freight by steamships, with termini of its line at Charleston, S. C., Norfolk, Va., and Baltimore, Md. By complaint, filed June 14, 1915, it prays that the Commission, pursuant to a provision of the Panama Canal act of August 24, 1912, shall make an order requiring the rail carriers named in the complaint, hereinafter called defendants, to establish and maintain proportional

rates on freight traffic from Louisville, Ky., Cincinnati and Portsmouth, Ohio, and other points, to Norfolk, destined to Charleston, in connection with a boat line to be operated by complainant, and all other boat lines which may operate between the same points.

The Freight Adjustment Steering Committee of Charleston, the Whitaker-Glessner Company, and the Board of Trade of Portsmouth intervened in behalf of the complainant.

The capital stock of complainant is \$100,000, about \$50,000 of which is subscribed and \$10,000 paid in. The payments were made to satisfy the requirements of the state laws, and on condition that a decision favorable to the complainant should be rendered by this Commission. The stockholders are responsible business men of Charleston interested in the transportation of property to and from that city.

The defendants' lines do not extend south of Norfolk, Richmond, Lynchburg, and other Virginia cities. In connection with other rail carriers, the lines of which extend to the south from the Virginia cities to points in Carolina and southeastern territories, including Charleston, the defendants maintain joint rates to those points from Louisville, Cincinnati, and other Ohio River crossings.

The complainant proposes, under certain conditions, to carry property by steamships from Baltimore and Norfolk to Charleston. It owns no vessel and never has operated one. It has no terminals for the receipt and delivery of shipments at any point. It has no equipment of any kind. Promoters and officers of complainant frankly state that it does not intend to engage in the transportation of property unless and until the defendants shall be required by order of this Commission to establish proportional rates applicable to traffic moving from and via the Ohio River crossings to Norfolk which shall be no higher than the defendants receive for their part of the through all-rail transportation from the Ohio River crossings to points in Carolina territory via the Virginia cities. It is asserted by complainant that unless the proportional rates are made on the basis desired by it, the service it is to render will be of no benefit to the business interests of Charleston.

The scale of class rates in effect from Ohio River crossings to the Virginia cities ranges from 32 cents first class to 10 cents sixth class, with lettered classes under southern classification in proportion. Through all-rail rates from points on the Ohio River, such as Louisville, Cincinnati, and Portsmouth, to points in Carolina territory are constructed by adding to that scale the local or proportional rates from the Virginia cities to destinations. Through rates to Charleston are not now made on this basis, but the complainant asserts that any other basis would be discriminatory against it.

There is no boat line now engaged in transporting freight from Norfolk to Charleston.

The complainant has no tariff on file with this Commission. It proposes, if the prayer of its complaint is granted, to file a tariff, naming proportional rates on a scale ranging from 37 cents first class to 12 cents sixth class, with the lettered classes in proportion. This proposed scale is the same as that now applicable to shipments from Baltimore to Charleston. The joint all-rail rates from the Ohio River crossings to Charleston are now on a scale ranging from 95 cents first class to 46 cents sixth class, with the lettered classes in proportion. The through rates via defendants' lines on the basis sought would range from 69 cents first class to 22 cents sixth class, with the lettered classes in proportion.

There is much controversy in the evidence and on brief respecting the question whether the 32-cent scale accepted by defendants for their part of the through all-rail rate from the Ohio River crossings to points in Carolina territory is a proportional scale or merely represents divisions accruing to defendants out of the through rates. It is not deemed necessary to discuss the evidence in this regard or to reach a conclusion on that question in this proceeding.

At the conclusion of the hearing the defendants moved to dismiss the complaint on the ground that the complainant has not a status which entitles it to demand proportional rates of defendants. We are thus confronted with an important jurisdictional question.

The amendment of August 24, 1912, as far as here material, provides as follows:

When property may be or is transported from point to point in the United States by rail and water through the Panama Canal or otherwise, the transportation being by a common carrier or carriers, and not entirely within the limits of a single state, the Interstate Commerce Commission shall have jurisdiction of such transportation and of the carriers, both by rail and by water, which may or do engage in the same, in the following particulars, in addition to the jurisdiction given by the act to regulate commerce, as amended June 18, 1910:

(a) To establish physical connection between the lines of the rail carrier and the dock of the water carrier by directing the rail carrier to make suitable connection between its line and a track or tracks which have been constructed from the dock to the limits of its right of way, or by directing either or both the rail and water carrier, individually or in connection with one another, to construct and connect with the lines of the rail carrier a spur track or tracks to the dock. This provision shall only apply where such connection is reasonably practicable, can be made with safety to the public, and where the amount of business to be handled is sufficient to justify the outlay.

The Commission shall have full authority to determine the terms and conditions upon which these connecting tracks, when constructed, shall be operated, and it may, either in the construction or the operation of such tracks, determine what sum shall be paid to or by either carrier. The provisions of this paragraph shall extend to cases where the dock is owned by other parties than the carrier involved.

(b) To establish through routes and maximum joint rates between and over such rail and water lines, and to determine all the terms and conditions under which such lines shall be operated in the handling of the traffic embraced.

(c) To establish maximum proportional rates by rail to and from the ports to which the traffic is brought, or from which it is taken by the water carrier, and to determine to what traffic and in connection with what vessels and upon what terms and conditions such rates shall apply. By proportional rates are meant those which differ from the corresponding local rates to and from the port and which apply only to traffic which has been brought to the port or is carried from the port by a common carrier by water.

The provisions of section 1 of the act apply to any common carrier engaged in the transportation of passengers or property. There is no change or modification by the above amendment with respect to the agency of transportation over which the act confers regulatory authority upon this Commission. A corporation which proposes, but only under certain contingencies, to become a common carrier is not covered by the wording of the amendment. That confers jurisdiction upon the Commission—

when property may be or is transported from point to point in the United States by rail and water * * * by a common carrier or carriers, and not entirely within the limits of a single state.

It is apparent that the complainant must go through many stages of development before it can reach the status of a common carrier within the meaning of this amendment. Analysis of the language used justifies the conclusion that it deals with common carriers which, whether existing at the time of its enactment or thereafter, should, at the time when its provisions are invoked, be going concerns equipped and ready to engage in the interstate transportation of property.

Paragraph (a) of the amendment contemplates that a common carrier by water must be operating, or at least equipped to operate, since not only is a physical connection with its dock to be established, but the situation must be such that the Commission may ascertain whether "such connection is reasonably practicable"; whether it "can be made with safety to the public"; whether "the amount of business to be handled is sufficient to justify the outlay"; and "to determine the terms and conditions upon which these connecting tracks, when constructed, shall be operated"; and the Commission "may either in the construction or operation of such tracks, determine what sum shall be paid by either carrier." These preliminary requirements may not, as a practical matter, be determined in advance of the acquirement by the water line of terminal facilities.

Paragraph (c) provides that in establishing "maximum proportional rates by rail" the Commission shall determine to what traffic and in connection with what vessels and upon what terms and condi-

tions such rates shall apply. In the case presented by this record there is no vessel to move traffic, no terminal to handle it, and nothing to guide us to any conclusion as to what the terms and conditions with respect to the rates should be.

The complainant relies upon and refers to numerous decisions of the Commission to sustain its contention that it is entitled to an order requiring the defendants to establish the proportional rates desired by it, even before it has the necessary equipment to move traffic or terminals to handle it. Reference is made to *Suffern Grain Co. v. I. C. R. R. Co.*, 22 I. C. C., 178; *Flour City S. S. Co. v. L. V. R. R. Co.*, 24 I. C. C., 179; *Chattanooga Packet Co. v. I. C. R. R. Co.*, 33 I. C. C., 384; and *Kansas City Missouri River Navigation Co. v. C. & O. Ry. Co.*, 34 I. C. C., 67. The cases referred to do not sustain the contention of the complainant. None of the cases was brought under the amendment here invoked, nor was it asked in any one of them that we should require the initiation of proportional rates by rail carriers in connection with a proposed carrier by water not equipped in any way for the receipt and carriage of goods. The principles announced in those cases were predicated upon entirely different facts and circumstances and are not, for that reason, controlling here.

The Commission acts only by virtue of powers conferred by the Congress. The power granted under the amendment clearly confers regulatory authority over common carriers either engaged in or equipped to engage in interstate transportation of property by rail and water. The proportional rates referred to in the act are to be prescribed, if at all, under certain specified conditions, none of which now exist so far as the complainant is concerned.

We are of opinion and find that the complainant is not a common carrier within the meaning of the amendment and is not entitled to an order fixing the proportional rates desired by it. The complaint must be dismissed, and it will be so ordered.

40 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 779.
PACIFIC COAST-SOUTHWEST LUMBER.

Submitted May 12, 1916. Decided June 30, 1916.

Proposed increased rates on lumber and lumber articles from points in Oregon, Washington, Idaho, Montana, and western Canada to points in New Mexico, Oklahoma, and Texas not justified.

H. A. Scandrett, F. H. Wood, Thomas Bond, C. S. Burg, S. W. Hayes, H. G. Herbel, Robert Dunlap, and T. J. Norton for respondents.

Joseph N. Teal and William C. McCulloch for West Coast Lumbermen's Association.

W. V. Hardie for Oklahoma protestants.

E. P. Byars and G. H. Zimmerman for Texas protestants.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

By schedules filed to become effective January 15, 1916, but suspended by us to November 14, 1916, respondents propose to increase their rates on lumber and certain lumber products from points in Oregon, Washington, Idaho, Montana, and western Canada to numerous destinations in New Mexico, Oklahoma, and Texas. Protestants are shippers and commercial organizations in Texas and Oklahoma and shippers' organizations in the Pacific northwest.

The proposed increases range from 1 cent to 8½ cents per 100 pounds and the traffic affected thereby, with the exception of that to points in New Mexico, is limited to fir, larch, hemlock, cottonwood, pine, and spruce lumber and certain articles manufactured therefrom, all of which are designated in the tariff as group D. This group includes doors, not glazed, and sash knocked down. All rates are stated herein in cents per 100 pounds.

The points of origin are divided into five groups, and the rates applicable therefrom are designated as follows: Coast rates, Spokane rates, Oregon rates, Montana district No. 1, and Montana district No. 2. To the destinations in Oklahoma, the present and proposed rates from the coast group are 3 cents higher than the rates from the other groups named. To the Texas points, the present and proposed rates from the coast group are, respectively, 3 cents and 7 cents higher than the rates from the other four groups. As the rates from the coast group are representative as to points of origin, and testimony with reference

to them only has been introduced, the rates referred to herein are those applicable from the coast group. Oklahoma City, Okla., and Fort Worth, Tex., are representative destination points.

Respondents state that the proposed rates are not primarily for the purpose of securing additional revenues, but that they are increased so as to restore an adjustment which was in effect prior to September 21, 1914, and that the reduction made by them on that date was unwarranted and unnecessary.

The original basis of rates on lumber from the Pacific northwest to destinations in Oklahoma and Texas was combinations on Kansas City, Mo. The through rates on lumber from this territory to many Texas points are now made in combination on Denver, Colo., using the 40-cent rate to Denver plus 32 cents beyond. This was the rate to Fort Worth prior to September 21, 1914, and was blanketed to practically all points in Texas, except those in the extreme southern part and those in the so-called Panhandle district of western Texas. To Amarillo, Tex., the principal point in the Panhandle district, the rate was 68 cents. To Oklahoma, however, the joint rates are now generally made in combination on Kansas City, using an unpublished division of 42.5 cents to that point, plus the local rates beyond. The local rate to Kansas City is 50 cents. Using the basing division to Kansas City, plus the local rate of 24 cents to Oklahoma City, the through rate to the latter point would be 66.5 cents. This was the rate in effect to Oklahoma City and other central Oklahoma points prior to September 21, 1914.

In 1914 the Chicago, Rock Island & Gulf Railway Company, at the solicitation of a Fort Worth silo manufacturer who desired to use lumber from the Pacific northwest, and upon the expectation of an increased tonnage, agreed to reduce the rate to Fort Worth to 63.5 cents. It is stated that this reduction was not sanctioned by other interested lines, but that they were forced to meet it for competitive reasons. The result was that on September 21, 1914, the rates were reduced to 63.5 cents to all points in Texas intermediate to Denison and Fort Worth on the main lines of the Galveston, Harrisburg & San Antonio Railway, the Houston & Texas Central Railroad, and the Trinity & Brazos Valley Railway via El Paso and Houston; also on the line of the Texas & Pacific Railway between El Paso and Texarkana and on the St. Louis Southwestern Railway of Texas. To Waco and Austin, Tex., and other points in the territory between the lines of the Texas & Pacific from Fort Worth to El Paso and the Galveston, Harrisburg & San Antonio Railway from El Paso to Houston, no reductions were made. This resulted in complaints of discrimination and there is now pending before the Com-

mission a complaint styled *William Cameron & Co. v. Abilene & Southern Ry.*, Docket No. 8478, attacking this 72-cent rate to Waco and Austin.

Oklahoma City and other points in Oklahoma are directly intermediate to Fort Worth via certain lines. The rates to those points were also reduced to 63.5 cents, so as to conform to the fourth section. Rates to Muskogee, Okmulgee, Tulsa, and other points in eastern Oklahoma were not affected by the reduction, and both prior and subsequently to September 21, 1914, these points have enjoyed rates lower than those to central Oklahoma territory. This is due to the fact that they are nearer to Kansas City than are the central Oklahoma points, and as the rates are made in combination on Kansas City they receive the benefit of their natural location.

The following table shows the present and proposed rates on lumber from the Pacific northwest to representative points in Oklahoma and Texas. The proposed rates are in each instance the same as the rates in effect prior to September 21, 1914:

	Present rate.	Proposed rate.		Present rate.	Proposed rate.
McAlester, Okla.....	63.5	64.5	San Antonio, Tex.....	63.5	72.0
Oklahoma City, Okla.....	63.5	66.5	Houston, Tex.....	63.5	72.0
Gainesville, Tex.....	63.5	72.0	El Paso, Tex.....	63.5	72.0
Fort Worth, Tex.....	63.5	72.0	Amarillo, Tex.....	63.5	68.0
Hillsboro, Tex.....	71.5	72.0	Dalhart, Tex.....	63.5	68.0

The present rates to Kansas City, Wichita, Kans., Fort Smith, Ark., and Muskogee, are, respectively, 50 cents, 56.5 cents, 58.5 cents, and 57.5 cents. The rates to these points, as well as to points in their immediate localities, are the same as those in effect prior to September 21, 1914.

In justification of the proposed rates respondents urge that they will restore the adjustment that existed prior to September 21, 1914, under which there was no complaint, and will correct an error of judgment which resulted in their reduction.

While admitting that the proposed rates have not been carefully checked with a view of determining whether or not they will result in a fair and equitable adjustment, respondents' position is that if they were on a proper basis prior to September 21, 1914, they will again be satisfactory when restored. It appears, however, that for a long period shippers in the Pacific northwest have been dissatisfied not only with the measure of the rates on lumber from that territory to Texas and Oklahoma points but also with their relation to rates from California producing points.

Respondents are also apprehensive that a continuation of the present rates to the destinations in question will result in a demand for reductions in the rates on lumber from other points, and also on shingles to Texas and Oklahoma because of the fact that the rates on shingles are made, as a rule, 10 cents higher than the lumber rates. The present rates on shingles from the Pacific northwest to points in Oklahoma and Texas are on a basis of 10 cents higher than the lumber rates in effect prior to September 21, 1914, and are, therefore, from 11 cents to 18.5 cents higher than the present rates on lumber.

Shingles manufactured in the Pacific northwest compete with California redwood shingles and with pine and cypress shingles manufactured in Louisiana and Texas. One of the witnesses for respondents testified that the shingle movement represents approximately 80 per cent of the movement of all forest products from the Pacific northwest via his line. Protestants in the Pacific northwest assert that if the proposed increased rates are allowed to be made effective they will be unable to compete with manufacturers of lumber and shingles in California. The present rate on lumber from California to points in Oklahoma and Texas is 50 cents, and on shingles it is 60 cents. From the Pacific northwest to Oklahoma City the rate on shingles is 76.5 cents and to Fort Worth it is 82 cents, and it is insisted that these rates are not on a relative basis with the rates from producing points in California. An exhibit introduced by one of the Pacific coast protestants shows that the average distance from Portland, Oreg., to seven representative points in Texas, seven points in Oklahoma, and one in New Mexico is 238 miles longer than from San Francisco, Cal., to these same points, and that the average revenue per ton-mile on the present lumber rates to these destinations from Portland is 6.11 mills, as compared with 5.22 mills from San Francisco. This protestant urges that the rates on lumber from the Pacific northwest to Oklahoma should not exceed the rates from California by more than 5 cents and to Texas destinations should not exceed those from California by more than 10 cents.

The rate on lumber from California to Fort Smith, Ark., is 50 cents and to Texarkana, Tex., and Shreveport, La., it is 55 cents. As stated, the rate on lumber from California to Texas and Oklahoma is 50 cents. The present rates to Fort Smith, Texarkana, and Shreveport from the Pacific northwest are 58.5 cents, 63.5 cents, and 65 cents, respectively, as compared with proposed rates of 66.5 cents to Oklahoma City and 72 cents to Fort Worth. It will be noted that while the rates from California to Texarkana and Shreveport are 5 cents over the rates from this same territory to Oklahoma and Texas points, the rates from the Pacific northwest to Fort Smith,

Texarkana, and Shreveport are from 1.5 to 8 cents less than the proposed rate to Oklahoma City and from 7 to 13.5 cents less than the proposed rate to Fort Worth. Respondents have not attempted in any way to explain this apparent inconsistency and discrimination.

Respondents say that the reduction in rates has not brought about the increased tonnage promised and expected. In support of this contention they introduced an exhibit which shows that during the period between September 21, 1914, and March 1, 1916, five of the respondents handled to Fort Worth, Waco, Dallas, and Gainesville, Tex., and Oklahoma City a total of 51 carloads of lumber and lumber products from the north Pacific coast. This exhibit, however, does not show the movement for any particular period prior to September 21, 1914, nor does it show the movement over the St. Louis Southwestern Railway or the Rock Island system. Protestants say that there has been some increase in the movement, but no definite figures are introduced except for a few individual shippers. It appears that the principal silo manufacturer at Fort Worth uses about 50 cars of lumber from the Pacific northwest annually.

In further justification of the rates in issue respondents urge that the present rates are not on a normal basis because of the fact that the rates on lumber to Oklahoma City are usually made in combination on Kansas City, as explained, and the present rates are 3 cents below that basis; and that rates to central Texas points are 8.5 cents lower than the combinations on Denver, the normal basis for constructing them. The Oklahoma protestants assert that a system of rates based on Kansas City combinations deprives them of the natural advantage of their location and forces them to pay higher rates than do localities farther east, both on shipments from the east and from the west; that if Kansas City should be used as a basing point it is unreasonable and unfair to add to the rate to Kansas City the full local to Oklahoma City or central Oklahoma points, as the total haul is more than 2,200 miles, and the lines south of Kansas City for a haul of 343 miles to Oklahoma City should not, in view of the long haul, be entitled to receive as a division of the joint rate on the through traffic their full local rates south of Kansas City. Respondents insist that the Kansas City combination is the proper basis of making the rates because of the fact that most of the traffic moves that way, or is handled at that point on diversion or reconsigning orders. Protestants deny that lumber from the Pacific northwest ordinarily moves to Kansas City, but say that the natural route is over the Union Pacific system to Salina or Junction City, Kans. The Chicago, Rock Island & Pacific and the Atchison, Topeka & Santa Fe connect with the Union Pacific at

Salina and the Missouri, Kansas & Texas connects with it at Junction City.

The Oklahoma protestants show that Oklahoma City is a jobbing and manufacturing point and that in the manufacture of sash, doors, and lumber it is in competition with other cities of Kansas, Oklahoma, and western Arkansas. They think that the present rates are too high when compared with the rates to surrounding territory, and are discriminatory against Oklahoma City in favor of the points at which competitors are located. With particular reference to Muskogee it is contended that while it may be proper to make a local rate to that point from Kansas City 9 cents lower than to Oklahoma City for a difference in distance of 86 miles in a haul of 343 miles it is unjust to make the same difference in rates where the hauls average more than 2,200 miles. It is stated that via the routes this traffic moves the distances to Oklahoma City are less than those to Muskogee.

It appears that the rate on lumber from the Pacific northwest to Little Rock, Ark., is 63.5 cents and that the proposed rate to McAlester, Okla., is 64.5 cents. Oklahoma City is intermediate to these points via the line of the Rock Island, yet it is proposed to make the rate to Oklahoma City 66.5 cents. It is stated that the distance via the Rock Island to Little Rock is only 110 per cent of the short-line distance. The present rates to Shreveport, La., and Texarkana, Tex., are 65 cents and 63.5 cents, respectively. The routing under these rates, however, appears to be restricted so that they do not apply via lines operating east and west through the state of Texas, but are only applicable via direct lines from Kansas City.

The following table, which is in part taken from one of protestants' exhibits, shows the distances, rates, ton-mile and car-mile earnings under the present and proposed rates to certain representative Texas and Oklahoma points. It also shows similar information as to representative points in the states of Texas, Oklahoma, Missouri, Kansas, Louisiana, and Arkansas to which no changes are proposed. The first-named points are for convenience designated as section 1, while those last named are referred to as section 2. The distances used are the average distances from Tacoma and Seattle, Wash., and Portland, Oreg. The car-mile earnings are based on an average loading of 58,000 pounds.

To—	Dis- tance.	Present rates from coast.	Revenue per ton-mile.	Proposed rates from coast.	Revenue per ton-mile.	Per car- mile earnings, present rates.	Per car- mile earnings, proposed rates.
Section 1:	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>	<i>Cents.</i>
Amarillo, Tex.....	1,965	63.5	6.5	68.0	6.9	18.7	20.0
Wichita Falls, Tex.....	2,186	63.5	5.8	72.0	6.5	16.8	19.1
Sherman, Tex.....	2,308	63.5	5.5	72.0	6.2	15.9	18.6
Fort Worth, Tex.....	2,301	63.5	5.5	72.0	6.2	16.0	18.1
Dallas, Tex.....	2,332	63.5	5.5	72.0	6.1	15.7	17.9
San Antonio, Tex.....	2,557	63.5	4.9	72.0	5.6	14.4	16.3
Houston, Tex.....	2,578	63.5	4.9	72.0	5.6	14.2	16.2
Oklahoma City, Okla.....	2,253	63.5	5.6	66.5	5.9	16.3	17.1
Average.....	2,311	.....	5.5	.....	6.1	16.0	17.8
Section 2:							
Texarkana, Tex.....	2,462	63.5	5.1	.....	.....	.....	.....
Shreveport, La.....	2,519	65.0	5.1	.....	.....	.....	.....
Little Rock, Ark.....	2,504	63.5	4.9	.....	.....	.....	.....
Fort Smith, Ark.....	2,460	58.5	4.7	.....	.....	.....	.....
Muskogee, Okla.....	2,279	57.5	5.0	.....	.....	.....	.....
Tulsa, Okla.....	2,301	56.5	4.9	.....	.....	.....	.....
Okmulgee, Okla.....	2,347	61.5	5.2	.....	.....	.....	.....
Wichita, Kans.....	2,081	56.5	5.4	.....	.....	.....	.....
Coffeyville, Kans.....	2,192	53.5	4.9	.....	.....	.....	.....
Joplin, Mo.....	2,214	52.5	4.5	.....	.....	.....	.....
Topeka, Kans.....	2,077	50.0	4.8	.....	.....	.....	.....
Kansas City, Mo.....	2,141	50.0	4.7	.....	.....	.....	.....
Average.....	2,306	.....	4.9	.....	.....	.....	.....

It will be noted that the average distance to the points in section 1 exceeds that to points in section 2 by only 5 miles; that the average revenue per ton-mile under the present rates to points in section 1 is 5.5 mills, while that under the proposed rates is 6.1 mills. The average revenue per ton-mile to points named in section 2 is 4.9 mills. It will also be noted that the average car-mile earnings under the present and proposed rates to points named in section 1 are 16 cents and 17.8 cents, respectively.

The New Mexico points involved are located on the line of the St. Louis, Rocky Mountain & Pacific Railway, which runs in a south-westerly direction from Des Moines through Cimarron, N. Mex. To Cimarron the rates on articles named in the tariff as taking groups A, B, and C rates are proposed to be increased 4 cents. Koehler Junction, N. Mex., is located between Des Moines and Cimarron, and to this point the rates on groups A, B, and C are increased 4 cents. To Koehler, N. Mex., located on a short line of this road branching off to the north from Koehler Junction the rates on groups A, B, C, and D are increased 4, 4, 4, and 2 cents, respectively. Respondents testified that they desire to increase the rates to these points to the same basis as the rates in effect to French, N. Mex., which is asserted to be the normal basis. No attempt was made to justify these rates on other grounds.

In justification of the proposed rates respondents seem to rely principally upon the proposition that they are but restoring rates formerly in effect and that a presumption of reasonableness inheres in the same. While the fact that a rate or body of rates has been in effect for a considerable period of time may be strongly persuasive of the reasonableness of such a rate or rates, the mere reestablishment of a former rate structure is insufficient to satisfy the requirements of the statute. The burden is upon respondents to justify the reasonableness and propriety of the proposed increased rates. That burden can not be sustained by simply showing that the increased rates would, to a certain extent, establish a uniform adjustment. We said in *Rates on Lumber*, 32 I. C. C., 494-496:

The justification offered for the proposed increased rates is hardly more than an expressed desire to secure uniformity in the rate relationship. There are doubtless cases where increased rates may be proper for this purpose, but it is to be remembered that uniformity may be secured in many cases by reduced rates as well as by increased rates. The mere fact that a relation of rates requires readjustment in the interest of uniformity is not proof that rates increased to the level of the relatively higher rates are reasonable.

The fact, if it be such, that the normal basis of through rates to Oklahoma City is the combination on Kansas City, does not establish the reasonableness of the proposed rates. When compared with other rates in this territory the present rates to the destinations in Texas and Oklahoma do not appear to be unduly low.

Upon the record as a whole we have reached the conclusion, and so find, that the rates proposed have not been justified. An order will be entered requiring the cancellation of the schedules under suspension.

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INVESTIGATION AND SUSPENSION DOCKET No. 768.
LATH YARN FROM AUBURN, N. Y.

Submitted March 17, 1916. Decided June 28, 1916.

Proposed cancellation of commodity rates on fodder yarn, lath yarn, rope, and twine in carloads, and on fodder yarn and lath yarn in mixed carloads with agricultural implements, from points in New York to points in New England and Canada found justified.

John M. Sternhagen for New York Central Railroad Company.

S. S. Perry for New York, New Haven & Hartford Railroad Company.

R. Van Ummersen for Boston & Albany Railroad Company.

Harry C. Burnett for Lehigh Valley Railroad Company.

No appearance for protestant.

William P. Libby for Plymouth Cordage Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By tariffs filed to take effect January 1, 1916, respondent Lehigh Valley Railroad Company proposed to cancel its present commodity rates on fodder yarn, lath yarn, rope, and twine, in carloads, and on fodder yarn and lath yarn in mixed carloads with agricultural implements, from Auburn, N. Y., to points in New England and in the province of Quebec, Canada. Respondent New York Central Railroad proposed simultaneously to cancel its commodity rates on rope and twine in carloads from Auburn, and on fodder yarn and lath yarn in mixed carloads with agricultural implements from Auburn, Syracuse, and Utica, N. Y., to the same destinations. Commodity rates on binder twine in mixed carloads with agricultural implements would not be affected. Upon protest by the Columbian Rope Company of Auburn the schedules were suspended until April 30, 1916, and later until October 30, 1916.

Cordage, including rope, binder twine, lath yarn, and fodder yarn, in carloads, is classified fourth class in official classification but by exceptions to the classification fifth-class rates apply generally in New England territory. For a number of years, however, carloads of rope and binder twine, from Auburn to points in New England and Quebec, have moved under commodity rates predicated on sixth-class rates. In 1912 commodity rates were established on the sixth-class basis from Auburn, Syracuse, and Utica to the destinations

indicated on lath yarn and fodder yarn in mixed carloads with agricultural implements. The present commodity rate from Auburn to Boston, for example, by way of the Boston & Albany is 15.8 cents; the rate by way of the New York, New Haven & Hartford Railroad, 16.3 cents. The fifth-class rate is 18.4 cents. The withdrawal of these commodity rates would restore the fifth-class basis on this traffic.

Protestant does not ask to have the present rates maintained except to Boston, which is the most important destination affected by the proposed cancellation of the commodity rates. No appearance was entered for protestant at the hearing.

Respondents state that the tariffs were issued to remove a discrimination against the Plymouth Cordage Company, which is engaged in the manufacture of cordage at North Plymouth, Mass., 37 miles south of Boston. The fifth-class rates apply on cordage from North Plymouth to all New England points except Boston, where water competition has induced a commodity rate of 5 cents. Respondents also urge that the withdrawal of the commodity rates would place the rates on a uniform basis throughout this territory. They state that the commodity rates on binder twine in mixed carloads with agricultural implements were not canceled because of our holding in the *Western Classification Case*, 25 I. C. C., 442, 504, that carriers should permit it to move with agricultural implements at the rate and minimum applicable thereto. There are shippers of agricultural implements at Auburn, Syracuse, and Utica, but Auburn is the only point in that general territory where cordage is made.

The short-line distance from Auburn to Boston is 375 miles. The average distance from Auburn to points taking the 16.3-cent rate is stated to be approximately 425 miles. For the latter distance the revenue per ton-mile under the present rate is 7.7 mills. The fifth-class rate of 18.4 cents would yield 8.7 mills per ton-mile.

We find that respondents have justified the increased rates proposed and an order will be issued vacating the order of suspension.

INVESTIGATION AND SUSPENSION DOCKET No. 770.
FOREST PRODUCTS FROM ARKANSAS POINTS.

Submitted April 14, 1916. Decided June 22, 1916.

Proposed cancellation of joint carload rates on lumber and on rough stave bolts from certain stations on the Blytheville, Leachville & Arkansas Southern Railroad to certain stations on the St. Louis & San Francisco Railroad, justified.

Walter Williams and *Thomas Bond* for respondents.

George B. Webster for Senath Manufacturing Company and Paulding Stave Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By schedules filed to take effect January 1, 1916, respondents proposed to cancel the joint carload rates of 6 cents per 100 pounds on lumber from certain stations on the Blytheville, Leachville & Arkansas Southern Railroad, hereinafter called the Blytheville road, to numerous stations on the St. Louis & San Francisco Railroad, hereinafter called the Frisco, and rates of 2 cents per 100 pounds on rough stave bolts from the same points of origin to Bucoda and Paulding, Mo., on the Frisco. Upon protest by the Senath Manufacturing Company, operating a stave factory at Senath, Mo., and hereinafter referred to as protestant, the schedules were suspended until October 30, 1916. Later the Paulding Stave Company of Paulding, Mo., also filed a protest, but no evidence has been offered in its behalf.

No lumber now moves under the present rates and protestant has no interest in the continuance of the joint rates on lumber. The combination rates on stave bolts which would be effective if the joint rates were canceled would be composed of a mileage scale reshipping rate of 2 cents per 100 pounds maintained by the Frisco from Leachville, Ark., where it connects with the Blytheville road, to Bucoda and Paulding, located 11 and 6 miles, respectively, north of the junction point, and proportional rates of 2 cents to Leachville from Blytheville stations, Clearwater to Hancock, Ark., inclusive, and 2½ cents from Waco to Riverdale, Ark., inclusive, Riverdale, the most distant of the Blytheville road stations referred to, being about 19 miles south of Leachville. The present joint rates apply from

certain of the stations from which the 4-cent combination would be applicable and from certain of the stations from which the 4½-cent combination would be applicable. Protestant also has no direct interest in the maintenance of the joint rate on stave bolts to Bucoda or Paulding. It desires to have the application of the present joint rate of 2 cents to Bucoda extended to Senath, 5 miles beyond Bucoda, and it is not at all interested in the maintenance of this rate to Bucoda if it is not applicable to Senath.

Respondents testify that formerly there were no stave mills on the line of the Blytheville road, that the present joint rates on stave bolts were established to provide a market for the commodity, and that they were established on a low basis to meet competition from near-by Frisco points. Since the rates were established originally a number of stave mills have been erected at points on the line of the Blytheville road. It is not customary in this territory for joint rates to be maintained to the milling point on the rough material of forest products. The present rates divide 1.2 cents to the Blytheville road and 0.8 cent to the Frisco and are said to be unremunerative to each of the respondents. Further evidence is offered to show that both components of the combination rate sought to be made effective are on a low basis and that the combination rates would place Bucoda and Paulding on the same basis as other stations on this line of the Frisco, including Senath.

We find that respondents have justified the proposed cancellation of the joint rates in question and an order will be entered vacating our suspension order.

No. 7812.

BENJAMIN ELECTRIC MANUFACTURING COMPANY

v.

**ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.**

Submitted August 30, 1915. Decided June 22, 1916.

Western classification less-than-carload rating applicable to electric light or lamp reflectors made of enameled iron, steel, or tin, in barrels or boxes, found unreasonable to the extent that it exceeds the ratings contemporaneously applicable under the same classification on less-than-carload shipments of sheet-iron enameled ware, not otherwise indexed by name, nested solid, or nested but not solid, in barrels or boxes.

Walter Hamilton and Jones, Addington, Ames & Seibold for complainant.

R. C. Fyfe and W. E. Prendergast for Western Classification Committee.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of electric light specialties at Chicago, Ill. By complaint, filed March 5, 1915, it alleges that the western classification first-class rating on electric light or lamp reflectors made of enameled iron, steel, or tin, in barrels or boxes, less than carloads, is unjust and unreasonable. The establishment of reasonable ratings for the future is asked.

The reflectors shipped by complainant are made of stamped, drawn, and spun steel, on which three coats of white porcelain enamel are fused. They are of different styles and sizes, varying in diameter from 8 inches to 22 inches, although about 99 per cent range from 12 inches to 22 inches in diameter. The most popular sizes are those ranging from 12 inches to 15 inches in diameter. Almost 95 per cent consist of reflectors about 2 inches deep with a 2½-inch hole for a fixture at the top, which nest solid, the inside and bottom surface of one reflector resting against the outside and top surface of the reflector below it, without any intervening space. The remainder consist of reflectors about 2½ inches deep with a 1-inch hole for a fixture at the top of a neck 3 inches long. This type does not nest solid. A metal coupling to be screwed to ceiling pipe formerly was

shipped attached to this type of reflector, but is now shipped separately. Reflectors range in value from 17 cents to \$2.25 each, according to style or size. The varieties generally shipped range in value from 57 cents to 80 cents each. The higher priced reflectors are shipped in small quantities. The types that nest solid are wrapped only in paper, while a quarter-inch ring of excelsior, hay, or felt is placed between those that do not nest solid. Complainant ships reflectors that do not nest, but such reflectors are not now in issue. Usually small quantities of reflectors are packed in fiber-board boxes about 18 inches high, about 10 reflectors to the box, which boxes are then crated in fours. Not over 5 per cent of complainant's shipments are packed in this manner. The remainder are packed in wooden boxes, weighing from 100 pounds to 120 pounds each, with no fixed number of reflectors per box. Complainant's shipments average from 700 to 800 pounds and nearly all of them move to its branch establishment at San Francisco, Cal. The packing adopted is intended to enable the reflectors to stand frequent handling and minimize breakage or damage in transit.

The western classification, which governs, provides as follows:

Electrical appliances, machinery, and supplies:

Reflectors, electric light or lamp, enameled iron, steel, or tin:	Class.
In barrels or boxes, L. C. L.-----	1
In crates, L. C. L.-----	1½

Complainant contends that regardless of the use to which the reflectors are put they are enameled ware and should not be rated higher than such other sheet-iron white enameled ware articles as dish pans, teakettles, ash tray and match tray bottoms, scale plates, fish pans, stove-door linings, etc., rated third class in less than carloads when nested solid and second class when partly nested.

Cheap enameled ware is made of thin low-grade steel with only one coat of gray enamel. The better grades are made of high-grade steel with three coats of white, or white and blue enamel. Enameled ware, foreign and domestic, and enameled reflectors, are made of the same material, by the same process, and range through the same values according to the material used in their manufacture. Kitchen utensils with projecting ears, handles, spouts, etc., constitute a large part of the enameled ware transported, and these articles clearly are more bulky than reflectors. Enameled ware and reflectors are rated identically in official classification territory.

The western classification provided no specific rating on enameled reflectors prior to February 13, 1913, and defendants contend that they were then properly subject to the first-class rating provided for lamps and lamp fixtures. A transcontinental tariff, effective Novem-

ber 15, 1914, provided a lower commodity rate applicable to stamped enameled ironware, n. o. s., and complainant so described some of its shipments. The description was corrected by the Western Weighing and Inspection Bureau, and as enameled reflectors were specifically provided for in the classification effective February 13, 1913, the commodity rate apparently thereafter was inapplicable. Defendants contend that reflectors are more valuable and move in less volume than the articles included in the western classification description of sheet-iron enameled ware, not otherwise indexed by name, including kitchen ware, and that they are properly given higher ratings. They assert that enameled ware is analogous to tinware, not otherwise indexed by name, including galvanized ware, which in barrels or boxes takes the same rating in the western classification as reflectors.

The diversity disclosed in the values, shapes, weight, etc., of enameled reflectors renders it impracticable to distinguish between them for classification purposes, and their similarity to enameled ware, in composition, range of values, and other characteristics, renders it inconsistent to rate them differently from such articles. We accordingly find that defendant's western classification less-than-carload rating on electric light or lamp reflectors, made of enameled iron, steel, or tin, nested solid or nested but not solid, in barrels or boxes, is, and for the future will be, unreasonable to the extent that it exceeds or may exceed the ratings contemporaneously applicable under the western classification on less-than-carload shipments of sheet-iron enameled ware, not otherwise indexed by name, nested solid or nested but not solid, in barrels or boxes.

An appropriate order will be entered.

40 I. C. C.

No. 7836.

WADDELL-WILLIAMS LUMBER COMPANY

v.

MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMSHIP COMPANY ET AL.

Submitted November 29, 1915. Decided June 22, 1916.

Charges collected for the transportation of lumber from Morgan City, La., to Port Arthur, Tex., not shown to have been unreasonable. Complaint dismissed.

E. W. McKay for complainant.

C. W. Owen; Fred H. Wood; Denegre, Leovy & Chaffe; and Baker, Botts, Parker & Garwood for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business at Rhoda, La. By complaint, filed March 15, 1915, as amended, it alleges that the rate of 14 cents per 100 pounds charged by defendants for the transportation of 81 carloads of Tupelo gum lumber from Morgan City, La., to Port Arthur, Tex., during the period from July, 1913, to January, 1914, inclusive, was unreasonable to the extent that it exceeded 9 cents per 100 pounds. Reparation is asked.

The shipments were consigned to the Texas Company and were for its Port Arthur Island plant, which is located on the tracks of the Port Arthur Canal & Dock Company. The Texarkana & Fort Smith Railway operates over the rails of the latter company and serves industries located thereon. Twenty-nine of the shipments were routed by complainant "K. C. S. Del'y." Forty shipments were routed "T. & N. O., K. C. S. at Beaumont," while 12 were unrouted. All of the shipments moved to Beaumont, Tex., over the lines of Morgan's Louisiana & Texas Railroad & Steamship Company, the Louisiana Western Railroad and the Texas & New Orleans Railroad. Fifty shipments were moved thence to Port Arthur by the Texarkana & Fort Smith Railway, a subsidiary of the Kansas City Southern Railway, while the remaining 31 shipments were moved from Beaumont to West Port Arthur by the Texas & New Orleans Railroad and tendered at West Port Arthur to the

Texarkana & Fort Smith Railway for switching to the consignee's plant. The Texarkana & Fort Smith had no published rate or other tariff provision covering the desired switching movement and refused to handle 30 of the shipments. One shipment apparently was accepted and delivered to consignee's island plant. Four of the shipments refused appear to have been subsequently delivered elsewhere in Port Arthur on the rails of the Texas & New Orleans. The remaining 26 were returned to Beaumont by the Texas & New Orleans and turned over there to the Texarkana & Fort Smith, which transported them to Port Arthur and delivered them to consignee's island plant.

No joint rate was in effect from Morgan City to Port Arthur applicable in connection with the Texarkana & Fort Smith and charges were collected on all of the shipments moved by the Texarkana & Fort Smith from Beaumont at a combination rate of 14 cents per 100 pounds: 9 cents to Beaumont and 5 cents beyond. The charges collected on the five shipments which were not returned from Port Arthur to Beaumont by the Texas & New Orleans are not disclosed. A joint rate of 9 cents per 100 pounds applied and still applies from Morgan City to Port Arthur over the lines of Morgan's Louisiana & Texas Railroad & Steamship Company and the Louisiana Western and Texas & New Orleans railroads. Effective April 1, 1914, the Texarkana & Fort Smith published a rate of \$5 per car for switching lumber from its West Port Arthur interchange track with the Texas & New Orleans to the Texas Company's island plant. Since that date the Texas & New Orleans has absorbed this charge on lumber reaching Port Arthur over its rails for delivery to industries located on the tracks of the Port Arthur Canal & Dock Company. Effective February 17, 1914, a joint rate of 11.5 cents per 100 pounds was established from Morgan City to Port Arthur in connection with the Texarkana & Fort Smith, which rate is still in effect.

The only evidence offered by complainant in support of its contention that 9 cents would have been a reasonable rate over the route in connection with the Texarkana & Fort Smith Railway is the 9-cent rate that was applicable in connection with the Texas & New Orleans. The rate was applicable, however, only on shipments for Texas & New Orleans delivery. The Texarkana & Fort Smith Railway was not represented at the hearing. Other defendants deny that the rate charged was unreasonable, but express willingness to make reparation on the basis of the 11.5-cent rate described. The general freight agent of Morgan's Louisiana & Texas Railroad & Steamship Company and the Louisiana Western Railroad stated that the 14-cent rate applicable in connection with the Texarkana & Fort Smith

Railway was reduced to 11.5 cents solely for the purpose of enabling complainant to obtain reparation on the shipments and not because the carriers considered the 14-cent rate unreasonable. Beaumont is 198 miles from Morgan City, Port Arthur 22 miles from Beaumont over the Texas & New Orleans Railroad and 19 miles over the Texarkana & Fort Smith Railway. Defendants observe that the lines maintaining the 9-cent rate are parts of the Southern Pacific system and practically constitute a single line, while the movement in connection with the Texarkana & Fort Smith involves two lines. For this reason they urge that the reasonableness of the rate in issue should not be determined merely on the basis of comparative distances.

We find that the rate charged on the shipments which moved beyond Beaumont by way of the Texarkana & Fort Smith Railway to Port Arthur is not shown to have been unreasonable and that the evidence does not enable us to reach any definite conclusions relative to the five shipments which did not move from Beaumont to Port Arthur by way of the Texarkana & Fort Smith Railway.

An order will be entered dismissing the complaint.

40 I. C. C.

No. 7963.¹
UNITED STATES
v.
ALABAMA & VICKSBURG RAILWAY COMPANY ET AL.

Submitted February 11, 1916. Decided June 29, 1916.

First-class rating provided in southern classification on postal cards, envelopes, and newspaper wrappers, stamped, when shipped for the account of the government on government bills of lading in cars protected by government locks and seals, minimum weight 30,000 pounds, found just and reasonable, and prescribed as a reasonable maximum rating in official and western classification territories.

Joseph Stewart for complainant.

H. A. Taylor, Ernest S. Ballard, A. P. Burgwin, C. P. Stewart, Morison R. Waite, and John R. Schindel for carriers in official classification territory.

R. Walton Moore and Willis H. Fowle for carriers in southern classification territory.

Kenneth F. Burgess and Robert H. Widdicombe for carriers in western classification territory.

William Ainsworth Parker for Baltimore & Ohio Railroad Company.

W. S. Bronson for Chesapeake & Ohio Railway Company and Chesapeake & Ohio Railway Company of Indiana.

Frederic D. McKenney for Pennsylvania Railroad Company.

W. Clayton Carpenter for defendants.

R. D. Hunter for Cleveland, Cincinnati, Chicago & St. Louis Railway Company and Cincinnati Northern Railroad Company.

F. G. Lantz for Erie Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complaints in these proceedings were filed by the Post Office Department, April 30, 1915, and October 6, 1915. The allegations are that the rates which defendants demand for the transportation of stamped envelopes and stamped newspaper wrappers in carloads from Dayton, Ohio, and of stamped postal cards in carloads from Washington, D. C., to various distributing points throughout the

¹ The proceeding also embraces complaint in No. 8372, Same v. Alabama & Vicksburg Railway Company et al.

United States, are unjust and unreasonable. The rates are those which would apply if the articles named were rated first class. We are asked to require defendants to establish a rating on stamped envelopes and stamped newspaper wrappers in carloads not to exceed fifth class in official classification territory and third class in western and southern classification territories, and a rating on stamped postal cards in carloads not to exceed third class in all three classification territories.

Stamped envelopes and stamped newspaper wrappers are manufactured at Dayton and stamped postal cards at Washington. All are shipped in carloads as government property to some 70 distributing points throughout the country. Formerly they were sent by registered mail, but by the act of June 26, 1906, 34 Stat., 467, 473, the Postmaster General was directed to withdraw them from the mails and to send them, when in freightable lots and whenever practicable, either by freight or express. They were withdrawn from the mails during the period from 1907 to 1909, and many carloads have since moved annually by freight, under government bills of lading, at rates quoted by the individual carriers and accepted by the Post Office Department. Until September 16, 1912, the rates ranged from fourth class to first class, or their equivalent, but since that date defendants have charged rates on stamped envelopes and stamped newspaper wrappers that have been equivalent to first-class rates, without land grant deductions. Certain of the defendants notified the Post Office Department that on and after January 1, 1916, rates equal to first-class rates would be demanded for the transportation of all carload shipments of postal cards.

Section 22 of the act to regulate commerce provides "That nothing in this act shall prevent the carriage * * * of property free or at reduced rates for the United States * * *." No rates are published on the articles involved by any of the defendants, and only the southern classification provides a rating for them.

Defendants challenge our power to require the establishment of ratings, on the ground that they are not "common carriers" of government stamped articles, but are essentially private carriers under special contracts. They have been and are, however, ready and willing to transport these articles for the government at rates satisfactory to them, and we are not asked to prescribe ratings for the benefit of the general public. Under the circumstances we think we have authority to prescribe reasonable ratings for the traffic in question, although, under section 22 of the act, the carrier and the government may agree upon some other rate. Conference Ruling 36. The tariff rate or classification rating is the maximum which the carriers may demand from the government. Conference Ruling 218.

Shipments of the articles are handled by defendants in substantially the same manner as other high-class freight. The articles are securely packed in boxes. They load on an average between 30,000 and 40,000 pounds per car, and the best equipment is required for their transportation. Complainant's records of annual carload shipments disclose that the selling price of stamped envelopes and stamped newspaper wrappers, which averaged \$2,770.25 per car to manufacture, averaged \$61,417.80, inclusive of postal value, while the price of stamped postal cards, which averaged \$1,898.10 per car to manufacture, averaged \$57,485.43, including postal value. Some of the shipments ranged as high as \$75,000 to \$78,000 per car. Claims for losses are few, but defendants are held strictly to account for the full value in the event of loss in a manner permitting the articles to reach the hands of unauthorized persons. In other instances, where defendants can produce the damaged articles or give satisfactory evidence of destruction, claims are entered on the basis of the cost of manufacture and distribution only.

Complainant urges that the articles involved should be rated substantially the same as unstamped envelopes, cards, and wrapping paper, but in our opinion there is no classification analogy between the stamped and unstamped articles.

Southern classification provides for the acceptance of postal cards, envelopes, and newspaper wrappers, stamped, at first-class rates when shipped for the account of the government on government bills of lading, in cars protected by government locks and seals, minimum weight 30,000 pounds. Defendants are willing to accept the same articles for the government at first-class rates, in substance and effect conforming to the provisions of the southern classification rating. We find that the southern classification rating is just and reasonable, and for the future will be a reasonable maximum rating in official and western classification territories also. Nothing herein said shall be taken to preclude consideration of a proper rating for private shippers, if any. An appropriate order will be entered.

No. 8000.
PITTSBURGH & OHIO MINING COMPANY ET AL.
v.
BALTIMORE & OHIO RAILROAD COMPANY.

Submitted February 3, 1916. Decided June 27, 1916.

Demurrage charges assessed by defendant on coal held in cars for transshipment at Lorain, Ohio, not shown to be unreasonable or unjustly discriminatory. Complaint dismissed.

Allen S. Olmsted, 2d, and Robert D. Jenks for complainants.
G. F. Malone for defendant.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

For several years the rail carriers whose lines extend from the coal fields of Ohio and West Virginia to the Lake Erie ports have made their demurrage tariffs, applicable on coal held at the ports for transshipment, effective not earlier than May 1 of each year. In 1913 and 1914 the defendant and the Cincinnati, Hamilton & Dayton Railway made their demurrage tariffs, applicable on lake coal at Lorain, Ohio, effective April 15. Between April 15 and May 1, 1914, demurrage charges accrued on coal shipped by the Jamison Coal & Coke Company from Fairmont, W. Va., to the Pittsburgh & Ohio Mining Company, its western sales agent, at Lorain, for transshipment. These two companies join as complainants in this proceeding, alleging that the charges collected were unreasonable and unjustly discriminatory.

The great lakes are officially deemed "open for navigation" as soon as the rivers and canals connecting the upper and lower lakes are sufficiently free from ice to permit the movement of vessels through them. Navigation is not usually safe, however, for several days later. Government reports show that in 1914 the Sault Ste. Marie Canal was "open" on April 20, but the first boats passed through the locks on April 23, eight days after the demurrage tariffs became effective, and for a number of days thereafter navigation was difficult and dangerous. Boats are usually not available for coal shipments for some time after the opening of navigation.

Prior to 1909 no demurrage rules were in effect at the lake ports. In that year four of the carriers published demurrage tariffs appli-

cable on transshipment coal, effective in August. In subsequent years, with the exceptions above noted, they were not made effective earlier than May 1 of each year. It has been the custom of the carriers to permit cars to come forward to the ports prior to the opening of navigation and remain there, without expense to the shippers, until the seasonal demurrage rules take effect. The latter usually provide that the season of navigation shall be considered as extending from May 1 to some time in December; that five days' free time will be allowed; and that in determining demurrage charges detention shall be computed for calendar monthly periods, except as otherwise specified.

The complainants' contention is that it was unreasonable and unjustly discriminatory for defendant to assess demurrage prior to May 1.

The record does not show the exact extent to which the defendant's equipment is used by shippers for storage at the ports, but apparently the practice is a general one. Shippers are permitted to forward their coal as early in the spring as they desire to do so. Approximately 800 cars are involved in the demurrage charges here in issue, and the reparation asked by the complainants in this proceeding is but part of a larger sum said to be due for car detention at the same port. The complainants state that the hopper cars used for this traffic are especially adapted to the transportation of transshipment coal, and that they are not in general demand for other uses. The defendant, though represented at the hearing, has taken no active part in the proceeding. In its answer it denies that the charges assessed were unreasonable or unjustly discriminatory, but expresses its willingness, "upon authorization from the Commission, to abate demurrage charges which accrued against the complainants prior to May 1, 1914."

We have expressed the view that carriers are justified in establishing car service rules which will insure the prompt release of equipment; that demurrage charges represent in part compensation to the carrier for the use of its equipment, and in part a penalty imposed upon shippers for the detention of cars; that carriers are not obliged to provide storage in cars, but if they do so they are entitled to reasonable compensation for the service; that a consignee has no legal right to use a car as a warehouse; that the business of a railroad is transportation, not storage; that storage at destination is a service not embraced in the rate, and for which additional compensation may be exacted; that it is to the interest of both carriers and shippers that cars be promptly released; and that an obligation rests upon defendant so to conduct its business that all of its patrons shall be accorded the fullest and freest use of its equipment. *Peale*,

Peacock & Kerr v. C. R. R. Co. of N. J., 18 I. C. C., 25; *Demurrage Charges on Interstate Traffic*, 25 I. C. C., 314; *Wilson Produce Co. v. P. R. R. Co.*, 16 I. C. C., 116, 121; *In re Demurrage Investigation*, 19 I. C. C., 496, 498; *N. Y. Hay Exchange Asso. v. P. R. R. Co.*, 14 I. C. C., 178, 184.

The complainants' request that the charges in question be declared unreasonable, because they accrued prior to May 1, is tantamount to a request that the defendant be required to accord free car service before that date. Viewing this situation in the light of our holdings in the cases above cited, it is clearly impossible to reach such a conclusion. We are of the opinion and find that the charges assailed are not shown to be unreasonable.

The allegation of unjust discrimination is not supported by the evidence of record. The fact that other carriers reaching the lake ports published demurrage rules which shippers deemed more liberal is not, of course, proof that the defendant's charges were unjustly discriminatory. The defendant reaches only four of the Lake Erie ports, Lorain, Sandusky, Cleveland, and Fairport, Ohio, and the tariffs show that defendant's demurrage rules became effective at all of these ports at the same date.

The complaint will be dismissed.

40 I. C. C.

No. 8139.

JOSEPH BANCROFT & SONS COMPANY

v.

NEW YORK, NEW HAVEN & HARTFORD RAILROAD
COMPANY ET AL.

INVESTIGATION AND SUSPENSION DOCKET No. 739.
COTTON PIECE GOODS FROM NEW ENGLAND POINTS.

Submitted May 3, 1916. Decided June 29, 1916.

1. Present rates on cotton piece goods in bales from producing points in New England to Rockford and Kentmere, Del., not found to be unreasonable; the latter points, however, are subjected to undue prejudice and disadvantage, and Philadelphia and Eddystone, Pa., and Millville, N. J., are unduly preferred by the rates on this commodity.
2. Proposed increased rates on cotton piece goods from producing points in New England to certain points in the middle Atlantic states not justified in full.

William A. Glasgow, jr., for Joseph Bancroft & Sons Company, Millville Manufacturing Company, and Eddystone Manufacturing Company.

S. S. Perry for New York, New Haven & Hartford Railroad Company; Rhode Island Company; and New England Steamship Company.

C. T. Wolfe for Philadelphia & Reading Railway Company.

E. P. Bates for Pennsylvania Railroad Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

These proceedings were consolidated for disposition in one report. The complainant in No. 8139 is a corporation operating bleacheries for the dyeing, bleaching, and finishing of cotton piece goods at Rockford and Kentmere, suburbs of Wilmington, Del., and alleges that the rates on that commodity from Fall River and New Bedford, Mass., and from Warren, R. I., to Rockford and Kentmere are unreasonable and unjustly discriminatory as compared with the rates from the same points of origin to Philadelphia and Eddystone Pa., and Millville, N. J. The defendants admitted that the rates were not properly aligned, but they attributed the maladjustment to the establishment of a few commodity rates which they deem unduly low. About the time that case came to a hearing the defendants proposed certain changes in their tariffs, filed to become effective

November 15, 1915, which would make increases in the rates on cotton piece goods from points in New England to certain destinations in the states of New York, New Jersey, Pennsylvania, Delaware, and Maryland. Among these changes were proposed increased rates to Rockford, Kentmere, Philadelphia, Eddystone, and Millville. By appropriate orders the tariffs containing these increased rates have been suspended until September 14, 1916.

By the suspended schedule it is sought to cancel the commodity rates and substitute therefor class rates. In the official classification cotton piece goods, any quantity, are rated rule 25, or 15 per cent less than second class. The protestants are Joseph Bancroft & Sons Company, complainant in the formal case, the Eddystone Manufacturing Company, the Millville Manufacturing Company, and the Martin Dyeing & Finishing Company, whose bleacheries are located at Eddystone, Pa., and Millville and Bridgeton, N. J., respectively.

By far the heaviest production of cotton piece goods in official classification territory is in southern New England. Some of the manufacturers have bleacheries attached to their mills; others operate only the cotton mills and ship the cotton piece goods to the bleacheries for finishing. The Joseph Bancroft & Sons Company, like its competitors whose bleacheries are located at Eddystone and Millville, is engaged only in bleaching, dyeing, and finishing cotton piece goods, most of which it obtains from New England mills. Some of the bleacheries buy cotton piece goods, finish them and sell them in the markets, while others, like the Joseph Bancroft & Sons Company, are engaged solely in finishing the raw material belonging to others.

The shipments of unfinished cotton piece goods from the mills to the bleacheries are usually made in bales weighing approximately 400 pounds each. After bleaching, dyeing, or printing the commodity is shipped to manufacturers to be used in making sheets, pillow cases, underwear, linings, dresses, aprons, and shirts. It is also shipped to jobbers and retailers for direct sale to the public. The shipments both to and from the bleacheries consist of the "whole cloth," not cut into sizes or shapes. When the integrity of the cloth is destroyed by cutting it into pieces for particular uses it ceases to be cotton piece goods and becomes dry goods, on which higher rates apply. Cotton damask, for example, is regarded as cotton piece goods when shipped in the whole cloth, but when made up into table covers and napkins it is classed as dry goods. When shipped from the bleacheries to the markets the finished goods are carefully boxed to prevent damage in transit.

Unfinished cotton piece goods, as they come from the mill, are familiarly known to retailers as unbleached muslin, which is used for mattress covers, clothes bags, ironing board covers, and other similar

purposes. When intended for use in the retail trade, however, the shipments are not made in bales, but the commodity is cleaned and made into specially prepared "bolts" or "pieces" for convenient sale in the stores. Only a small percentage of the unfinished cloth is sold at retail, most of it being sent to the bleacheries for finishing before it is put on the market. In the absence of commodity rates rule 25 of official classification applies both on the gray cloth to the bleacheries and the finished cloth from the bleacheries to the markets. The average value of the unfinished cloth is \$10,000 per car, and of the finished product \$11,500, the process of finishing adding approximately 15 per cent to the value of the cloth. The movement is regular and the tonnage heavy. It is said that one mill in New England ships 35 carloads daily. The Joseph Bancroft & Sons Company ships three or four carloads per day to New York, N. Y. In 1915 the total movement of the gray cloth from all points to Rockford and Kentmere was 27,561,285 pounds, 42 per cent of which was said to have come from the New England points named.

Most of the shipments from New England and from Rockford, Kentmere, Eddystone, and Millville move either to or through New York, which is the principal market. Commodity rates are usually published for the accommodation of the heavy traffic from the New England mills to New York, and for shipments of the unfinished cloth from the mills to the bleacheries. In other parts of official classification territory, including central freight association territory, the classification basis is uniformly applied. As nearly all of the bleacheries are on or near the Atlantic seaboard, the shipments to western points consist almost wholly of the finished cloth.

The present and the proposed rates from Fall River to a number of the destinations in question, in cents per 100 pounds, together with the percentages of increase, are shown in the following table:

From Fall River, Mass., to—	Present commodity rate.	Proposed rate (rule 25).	Percentage of increase.
Kentmere, Del.....	25.3	29.5	17.06
Rockford, Del.....			
Eddystone, Pa.....			
Philadelphia, Pa.....			
Millville, N. J.....	20.0	29.5	47.50

It will be observed that the greatest increase proposed is in the rate to Philadelphia, which is 15.8 cents at present, increased to 28 cents by the suspended tariff, an increase of 77.21 per cent. Prior to the filing of tariffs in conformity with the Commission's conclusions in *The Five Per Cent Case*, 32 I. C. C., 325, the rate from Fall River to Philadelphia was 15 cents. That rate was in effect for such a long period that the witnesses were unable to tell its origin. One of

them was of the opinion that it was originally established to meet water competition, and there is no doubt that in recent years such competition has existed. In June, 1914, the Merchants & Miners Transportation Company, which for a number of years had operated a boat line between Fall River and Philadelphia, withdrew its service between those points, and at the present time no effective water competition exists. The present rate of 15.8 cents to Philadelphia applies from some of the points of origin via either the New York, New Haven & Hartford Railroad or the New England Steamship Company, a subsidiary line, to New York, thence via the Pennsylvania Railroad or via the Central Railroad of New Jersey and the Philadelphia & Reading Railway. From other points the tariff provides only all-rail routes. Where both rail routes and water routes are available to New York the latter are principally used because of the superior service accorded by the steamship company. The complainant is at present using the 15.8-cent rate to Philadelphia and a rate of 9 cents maintained by the Bush line from Philadelphia to Wilmington, thus obtaining a rate lower by a fraction of a cent than the all-rail rate of 25.2 cents. The complainant is interested, therefore, in the amount of the rate to Philadelphia not only because it has competitors there but also because it now uses the Philadelphia rate for its own shipments.

New York being the principal market for the finished product, the bleacheries near that city have a natural advantage over those located farther away. Moreover, those in southern New England are in many instances at or near the mills in which the unfinished cloth is manufactured, while the complainant's bleachery at Rockford and Kentmere can be reached only by hauling the gray cloth an additional distance of over 300 miles. There are few, if any, bleacheries south of Rockford and Kentmere to which the gray cloth is shipped from New England for finishing. In competing with the New England bleacheries in the New York market the complainant absorbs the difference between the freight charges to and from its bleachery and those from the New England points to New York.

Except in a few instances the present commodity rates apply on any quantity, and in the tariff under investigation the rates are any-quantity rates in all instances. Shipments to the bleacheries are sometimes made in carloads, but generally in less than carloads. When small quantities of the unfinished cloth are shipped from several mills to the same bleachery at the same time, as is frequently the case, it is the practice of the carriers, when possible, to consolidate them into one or more carloads, and it is said that the average loading of cars received at the bleacheries is approximately 20,000 pounds.

At the hearing of the investigation and suspension proceeding the respondents rested their case almost wholly on the proposition that

there are no transportation reasons for publishing commodity rates on cotton piece goods, and that the classification basis, rule 25, should be uniformly applied. The evidence introduced in support of this contention, however, is most general in character. It is stated, for example, that in other parts of official classification territory cotton piece goods move on the class basis, rule 25, but it affirmatively appears that there are no bleacheries in other parts of the territory, and that there is no appreciable movement of unfinished cotton piece goods in official classification territory except in the region near the seaboard. The finished product is more generally used and it probably moves to some extent in all parts of the territory, but the only witness who testified for the respondents in the investigation proceeding was unable to give any definite information as to the quantity of movement.

In the territory west of the Mississippi River commodity rates on cotton piece goods are commonly published, at least to the principal points of consumption. The present adjustment in the territory here involved, except for the recent 5 per cent increase, has been in effect for 30 years or more, and the respondents' principal witness admitted that during that time there has been no substantial change in the circumstances surrounding the transportation of this commodity.

So far as the record shows the only movement of unfinished cotton piece goods which is fairly comparable with the movement under the rates before us in this proceeding is that from the points of production in New England to New York. For this movement commodity rates are published which barely exceed 50 per cent of the rates prevailing under the classification basis. From Fall River and Warren to New York, for example, the commodity rate is 12.5 cents, while the rule 25 rate is 23 cents. From New Bedford to New York a commodity rate of 12.5 cents is published, the rule 25 rate being 24 cents. It is not proposed to cancel the commodity rates from New England points to New York. A commodity rate on the finished product is also published to New York from Millville, N. J., where the bleachery of one of the complainant's competitors is located.

There has been considerable discussion of record as to whether cotton piece goods compete with dry goods, which are rated first class in official classification. It is said that commodity rates are not usually published on dry goods. The respondents maintain that cotton piece goods are similar to a number of other commodities which are classed as dry goods and which commonly move on first-class rates, and their position is that the classification basis, 15 per cent less than second class, is a liberal recognition of any differences in transportation conditions which may exist in favor of cotton piece goods. The

witnesses introduced by the protestants maintain that the competition, if any, is of no importance, and such evidence as appears of record supports their contention. Silks, velvets, woolens, and other fabrics commonly designated dry goods are used in the manufacture of dresses, suits, shirts, and other wearing apparel, and finished cotton piece goods are used for the same purposes. It does not appear, however, that *unfinished* cotton piece goods are used to the same extent for these purposes, and there is no evidence before us upon which we could conclude that the competition between these commodities is of such a character as properly to influence the relative rates of transportation; nor is it shown that the conditions surrounding the transportation of unfinished cotton piece goods in rolls or bales are at all similar to those which determine the rates on dry goods. Commodity rates on dry goods are published to New York from some points in New England on the New York, New Haven & Hartford Railroad.

Although the burden is upon the respondents to establish the reasonableness of the proposed increased rates, they have not provided the Commission with the information which should be submitted and which usually is submitted in cases of this character. The only witness who testified in their behalf in the investigation and suspension proceeding was unable to explain satisfactorily the transportation conditions surrounding this traffic. Although the respondents' need of additional revenue is assigned as one of the reasons for the proposed increases, the evidence as to the respondents' earnings on this traffic is meager; and although the movement of cotton piece goods in other parts of the territory on the classification basis is assigned as the principal reason for applying it between the points here involved, the record is almost devoid of evidence as to the movement in other parts of the territory. Upon such a record we are unable to find that the propriety of the proposed rates is established. It is apparent that the rate of 15.8 cents to Philadelphia is comparatively low, and it may be that certain departures from the requirements of the fourth section should be corrected. The following table compares the rate from Fall River to Philadelphia with other rates in the same territory:

From—	To—	Miles.	Rate.	Revenue per ton- mile.	Revenue per car. ¹	Revenue per car- mile. ¹
			<i>Cents.</i>	<i>Mills.</i>		<i>Cents.</i>
Fall River, Mass.....	Philadelphia, Pa.....	316	15.8	10.0	\$31.60	10.0
Do.....	New York, N. Y.....	207	12.5	12.1	25.00	12.1
Do.....	Rockford, Del.....	341	25.2	14.7	50.40	14.7
Do.....	Millville, N. J.....	357	20.0	11.2	40.00	11.2
Lewiston, Me.....	New York, N. Y.....	373	21.5	11.5	43.00	11.5
Onset Junction, Mass.....	.....do.....	239	15.0	12.6	30.00	12.6

¹ Based on loading of 20,000 pounds per car.

The present rate of 15.8 cents to Philadelphia does not conform to the long-and-short-haul provision of the fourth section of the act, the present rate to Newark, N. J., an intermediate point, being 16.8 cents. Although it was stated that the lower rate to Philadelphia may have had its origin in water competition, the respondents are unable to give any reason for a continuance of this fourth section deviation.

Upon consideration of the evidence before us, we find and conclude that the present rates from the New England points in question to Rockford and Kentmere, Del., are not shown to be unreasonable *per se*, but that they are unjustly discriminatory as compared with the rates to Philadelphia, Eddystone, and Millville. We further find and conclude that the respondents have not established the propriety of the proposed increased rates. We further find and conclude that the rate to Philadelphia from Fall River and points taking the same rates should not exceed 24 cents per 100 pounds, and that the rates to Rockford and Kentmere should not exceed those at present in effect. Since the distances from the points of origin to Millville and May's Landing, N. J., are approximately the same as those to Rockford and Kentmere, and since most of the class rates to these three points are the same, we find that the rates to Millville and May's Landing should not exceed the rates at present in effect from the same points of origin to Rockford and Kentmere. The class rates from the New England points to Eddystone are the same as those to Philadelphia, and apparently the same rate on cotton piece goods should apply to both points. The rates to Camden and Gloucester, N. J., should be the same as the rate to Philadelphia. The rates to a number of other destinations in New Jersey and Maryland are increased in the suspended tariffs, but as no justification of them was offered we must find that their reasonableness has not been established.

An order will be entered requiring the cancellation of the schedules under suspension. A tariff containing rates in conformity with our conclusions herein should be filed, effective on or before September 14, 1916, upon not less than five days' notice to the public and to the Commission. Upon the filing of such tariff an order of dismissal will be entered in No. 8139.

40 I. C. C.

No. 7110.
SIoux CITY LIVE STOCK EXCHANGE
v.
**CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA
RAILWAY COMPANY ET AL.**

Submitted May 15, 1915. Decided June 22, 1916.

1. Rates on live stock in carloads from points in southwestern Minnesota and southeastern South Dakota to Sioux City, Iowa, not found unreasonable, unjustly discriminatory, or unduly prejudicial.
2. The existing rules governing the free transportation of caretakers accompanying carload shipments of live stock from points in southwestern Minnesota and southeastern South Dakota to Sioux City, Iowa, appear to be unduly prejudicial in comparison with the rules governing from the same points of origin to St. Paul on traffic to South St. Paul, Minn., but the question can not be determined on the present record. Further hearing required.

C. E. Childe for complainant.

W. D. Burr for Chicago, St. Paul, Minneapolis & Omaha Railway Company.

Richard L. Kennedy and *John F. Finerty* for defendants.

N. P. Rogers for South St. Paul Live Stock Exchange, intervener.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a voluntary association composed of corporations, firms, and individuals located at Sioux City, Iowa. By complaint, filed July 16, 1914, it alleges that defendants' rates for the transportation of live stock to Sioux City from specified points in southwestern Minnesota and a few points in southeastern South Dakota are unreasonable, and that these rates and defendants' tariff rules governing the free transportation of caretakers accompanying carload shipments of live stock from the points of origin to Sioux City subject Sioux City and complainant's members to unjust discrimination and undue prejudice to the advantage of South St. Paul, Minn.

The points of origin are located on the Great Northern Railway from Willmar, Minn., to Hills, Minn., inclusive, including Sherman, Garretson, and Booge, S. Dak., and on the Chicago, St. Paul, Minneapolis & Omaha Railway, hereinafter called the Omaha, from Mankato to Bigelow, Minn., inclusive, and branch-line points in Minne-

sota between these stations. The territory served by the Great Northern Railway is nearer to Sioux City than to St. Paul. Hills, for example, is approximately 80 miles from Sioux City, while Willmar is 102 miles from St. Paul. The territory served by the Omaha is substantially equidistant from Sioux City and St. Paul. Defendants severally maintain local commodity rates on live stock to Sioux City and to St. Paul from the points named on their respective lines.

Complainant represents the interests of receivers of live stock and of meat-packing industries at Sioux City, where stockyards are located less than 1 mile from defendants' lines. There are no stockyards at St. Paul, only at South St. Paul, about 9 miles from St. Paul. The South St. Paul Live Stock Exchange intervened in behalf of receivers of live stock at South St. Paul. There are two large and several small packing houses at Sioux City; one large and several small houses at South St. Paul. Both Sioux City and South St. Paul draw live stock from the originating territory described.

Complainant wants rates on live stock to Sioux City based on the same distance scale that applies on intrastate shipments of live stock in Minnesota, pursuant to an act of the Minnesota legislature effective June 1, 1907, prescribing maximum commodity rates for the intrastate transportation of live stock and other commodities. The application of the rates prescribed was enjoined by the federal courts until July 26, 1913, as is more fully explained in *Holmes & Hallowell Co. v. G. N. Ry.*, 37 I. C. C., 627. The intrastate rates prior to July 26, 1913, were substantially the rates that had been voluntarily established by the carriers prior to 1906. These rates are hereinafter called the old Minnesota rates; the rates effective July 26, 1913, the new Minnesota rates. The new Minnesota rates generally are lower than the old Minnesota rates but in some instances are higher.

Complainant urges that the rates attacked to Sioux City are intrinsically unreasonable because higher for like distances than both the old and the new Minnesota rates. The rates to St. Paul also are cited, although the competitors of complainant's members are located at South St. Paul, which takes higher rates than St. Paul. This comparison throws little light upon the issue of discrimination, but the following portions of it may bear upon the issue of reasonableness:

From—	To—	Miles.	Cattle.	Hogs.	Sheep.
Mankato, Minn.....	St. Paul, old.....	85	12.5	12.5	12.5
Do.....	St. Paul, new.....	85	11.8	12.1	12.7
Manley, Minn.....	Sioux City.....	87	12.0	12.5	15.0
Marshall, Minn.....	St. Paul, old.....	165	15.0	15.0	15.0
Do.....	St. Paul, new.....	165	14.8	15.9	16.7
Do.....	Sioux City.....	163	15.0	15.0	20.0
Pipestone, Minn.....	St. Paul, old.....	208	18.0	18.0	18.0
Do.....	St. Paul, new.....	208	16.6	17.7	18.6
Clara City, Minn.....	Sioux City.....	206	20.0	18.0	20.0

The old Minnesota rates on sheep applied to double-deck or single-deck cars. The new Minnesota rates on sheep in double-deck cars are the rates applicable on cattle, and this basis has been established by the Omaha to Sioux City.

Other exhibits show that the present rates on cattle to Sioux City are generally lower than the old Minnesota rates but that the rates on hogs and sheep are in some instances on a higher scale than the old Minnesota rates, although the disparity is not substantial in either case. In many instances the old Minnesota rates on cattle and hogs are the same as or higher than the present scale of rates on cattle and hogs to Sioux City.

The old Minnesota rates on sheep established prior to 1906 are entitled to some consideration, but do not afford an adequate measure for the present rates on sheep in single-deck cars to Sioux City. The new Minnesota rates on cattle and hogs are consistently lower than the old Minnesota rates, but the rates on sheep generally are higher. The new Minnesota rates applicable from the points of origin to St. Paul vary from a fraction of 1 cent higher to more than 5 cents lower than the rates from equidistant points to Sioux City. Complainant emphasizes the holding of the Supreme Court of the United States that the new Minnesota rates are nonconfiscatory and urges that therefore the rates to St. Paul are prima facie reasonable and afford a fair standard of reasonableness for the rates from the same territory to Sioux City. But since a rate may be nonconfiscatory and at the same time too low to be reasonably remunerative, complainant's premise is not tenable.

Complainant contends that the rates assailed are unjustly discriminatory and subject its members to undue prejudice to the advantage of South St. Paul. Complainant admits that specific rates are not essential to satisfy the complaint and that an increase in the state rates from the Minnesota points to St. Paul to the basis of the interstate rates from equidistant points in the territory in issue to Sioux City would remove the cause of the complaint so far as rates are concerned. Complainant contends and defendants tacitly admit that the issue presented is the same in principle as that with respect to class rates in *Sioux City Commercial Club v. C. & N. W. Ry. Co.*, 22 I. C. C., 110, where the points of destination were substantially the points here designated as points of origin. We found in that case that—

The gist of the complaint is, that the class rates from Sioux City to said stations, and all stations intermediate thereto, in southwestern Minnesota are higher than the class rates from St. Paul and Minneapolis * * * to stations in the same territory equidistant from the respective distributing centers. * * * The issue is, therefore, whether defendants in applying lower class rates from the twin cities to the territory in question subject Sioux City

and its shippers to undue prejudice and disadvantage. * * * Upon consideration of all the facts and circumstances disclosed by this investigation it does not appear that there is any sufficient transportation reason why the class rates from Sioux City to the southwestern Minnesota territory in this proceeding mentioned should be higher than the class rates from the twin cities to such territory, and it is the finding and conclusion of the Commission that the class rates in effect from Sioux City to the stations located upon the lines of the defendants within the territory hereinbefore designated are unreasonable and discriminatory to the extent such rates exceed corresponding class rates applying from Minneapolis and St. Paul to substantially equidistant stations in said territory.

The case was decided December 12, 1911, and we found that the rates from southwestern Minnesota to Sioux City were unreasonable to the extent that they exceeded the old Minnesota rates.

Complainant urges the establishment of rates on live stock to Sioux City on the basis of the new Minnesota rates as a means of removing the alleged undue prejudice. The class rates from Sioux City to points equidistant from Sioux City and St. Paul in intermediate territory were found to favor St. Paul jobbers because of the application of a lower scale of rates from St. Paul. Discrimination in favor of St. Paul is not in issue here; only discrimination in favor of South St. Paul. Neither of the defendants serves South St. Paul, and neither of them publishes local rates or participates in joint rates on live stock to that point. The rates to South St. Paul are made by combinations of defendants' rates to St. Paul with a switching charge of \$2.50 on single-deck cars and \$2.75 on double-deck cars for switching from St. Paul 9 miles to South St. Paul by the St. Paul Bridge & Terminal Railway, not a party defendant. The Chicago Great Western Railway also performs switching from St. Paul to South St. Paul, but its charge for the service is substantially greater than the charge of the terminal railway. The rates to Sioux City include the cost of switching to the stockyards, defendants absorbing a switching charge of \$1.50 per car.

The following table compiled from exhibits of record compares rates to Sioux City with rates to South St. Paul on cattle, hogs, and sheep. The points of origin selected are about equidistant from Sioux City and St. Paul over defendants' lines. The switching rate to South St. Paul is not published in cents per 100 pounds and we have reduced it to that basis, using the average weight of 24,000 pounds per car for cattle and 18,000 pounds for hogs and sheep submitted by defendants and not disputed by complainant. This gives a rate of 1.04 cents per 100 pounds on cattle from St. Paul to South St. Paul; of 1.39 cents on hogs and sheep, in double-deck cars, and of 1.53 cents on hogs and sheep in single-deck cars. The rates on hogs and sheep in single-deck and double-deck cars average 1.46 cents and this is added to the rates from the representative points

to St. Paul. Rates from points in Iowa to Chicago for available distances as nearly as possible equal to the distances to Sioux City and South St. Paul also are shown.

	Miles.	Cattle.	Hogs.	Sheep.
Manley, Minn., to Sioux City.....	87	12.9	12.6	15.0
Litchfield, Minn., to South St. Paul.....	85	12.1	13.3	13.0
Brewster, Minn., to Sioux City.....	99	13.0	15.0	15.0
Minneopa, Minn., to South St. Paul.....	96	12.5	13.8	14.4
Thien, Minn., to Sioux City.....	112	14.0	15.0	18.0
.....	111	13.2	14.4	15.1
.....	122	15.0	15.0	18.0
.....	123	13.6	15.0	15.7
.....	136	15.0	14.0	16.0
.....	137	14.3	15.6	15.3
.....	138	14.7	14.8	18.4
.....	155	15.0	15.9	19.0
Paul.....	155	15.2	14.1	17.3
.....	157	15.5	16.5	18.5
.....	170	15.0	18.0	18.5
.....	170	15.8	17.3	18.1
.....	168	16.5	17.5	20.0
.....	174	15.7	18.0	19.0
.....	174	16.0	17.4	18.4
.....	172	17.0	18.0	21.0
.....	181	18.0	18.0	20.0
.....	181	18.3	17.7	18.6
.....	184	17.5	18.0	22.0
.....	196	20.0	18.0	20.0
.....	196	16.9	18.4	19.3
.....	194	18.5	18.0	22.0
.....	199	20.0	18.0	20.0
.....	200	17.1	18.7	19.6
.....	201	19.0	18.0	23.0
.....	205	20.0	18.0	20.0
.....	208	17.3	18.9	19.8
.....	210	19.5	18.5	23.0
.....	213	20.0	18.5	20.0
.....	216	17.6	19.1	20.0
.....	214	19.5	18.5	23.0
.....	225	20.0	18.0	20.0
.....	223	17.8	19.3	20.2
.....	219	19.6	18.5	23.0

The rates on cattle are lower to Sioux City than the rates on like shipments to South St. Paul from points which are approximately 85 miles, and 155 miles from the two markets. The rates on hogs to Sioux City average less than the rates to South St. Paul. The rates on sheep to Sioux City, however, are lower in most instances than the rates to South St. Paul, although just the opposite is true for certain distances. The rates applicable to sheep in double-deck cars between Minnesota state points are the rates applicable to cattle. When the complaint was filed the rates on sheep in double-deck cars to Sioux City were higher than the rates on cattle, but, as stated before, the Omaha has since made the rates on cattle applicable to sheep in double-deck cars to Sioux City.

Complainant urges that slightly more favorable rates to South St. Paul than to Sioux City divert live-stock traffic to South St. Paul. Testimony was introduced to show that a difference of \$2 or \$3 in the charges on a carload shipment of live stock is sufficient to divert it from one market to another and that the present relation of rates from the territory of origin is slightly injurious to the Sioux City

market. But no testimony was introduced to show that there has actually been any diversion of live stock to South St. Paul because of more favorable rates to that point. The tonnage statistics show that during the year ended December 31, 1914, 1,732 carloads of live stock were shipped to Sioux City and South St. Paul from the Great Northern territory, the percentage of cattle to Sioux City being 85.3 per cent, of hogs 82.1 per cent, of sheep 94.7 per cent. Apparently, therefore, the percentage of movement to Sioux City varies inversely with the disadvantage of Sioux City in rates. The statistics of the Omaha for 1913 show that 22 per cent of the total shipments of live stock from that portion of the territory in controversy lying nearer to St. Paul than to Sioux City moved to South St. Paul; 5.9 per cent to Sioux City; 72 per cent to Chicago; the remainder to Omaha, Nebr. In 1914 the figures were 18.1 per cent to South St. Paul, 5.1 per cent to Sioux City, 76.4 per cent to Chicago, the remainder to Omaha. The figures relative to shipments over the Omaha from that portion of the territory lying nearer to Sioux City than to South St. Paul were 17.2 per cent to South St. Paul, 47.2 per cent to Sioux City, the remainder to Chicago and Omaha for 1913; and 9.9 per cent to South St. Paul, 56.2 per cent to Sioux City, the remainder to Chicago and Omaha for 1914. There was a greater percentage of live-stock movement to South St. Paul in 1913 than in 1914, although the rates applicable in Minnesota during one-half of the year 1913 were higher than the rates applicable during 1914. From the entire Minnesota territory, including points not in issue, there was a decrease of $26\frac{1}{2}$ per cent in the movement of hogs to Sioux City in 1914 in comparison with the movement during 1913, and an increase of $6\frac{1}{2}$ per cent in the movement to South St. Paul. The slight importance of these figures is further minimized by the disclosure that the present rates on hogs to Sioux City are now and were in 1914 less generally than the rates to South St. Paul. Manifestly the freight rates alone are not determinative of the direction of the live-stock movement from the points under discussion. Market conditions doubtless are more strongly reflected than the rates in the relative tonnage to the two markets.

We find that the rates assailed are not shown to be unreasonable, unjustly discriminatory, or unduly prejudicial. A general investigation into the rates on live stock is in progress in *Live Stock and Products Case*, Docket No. 8436, and it may be that the rates to Sioux City will be considered and that some revision of them will be found necessary in that proceeding. Our findings at this time are therefore without prejudice to any findings which may be made therein.

The rates on horses are put in issue but it appeared at the hearing that complainant's members have little if any interest in such rates. Defendants' rules governing the granting of free transporta-

tion of caretakers of live stock are attacked also. The Minnesota state law requires defendants to accord round-trip free transportation to one caretaker accompanying from one to four carloads of live stock from and to points within the state of Minnesota. Defendants' rules governing free transportation of caretakers to Sioux City provide for the free transportation of one caretaker one way accompanying one carload of live stock. The rules governing free transportation of caretakers accompanying any number of carloads of live stock between points in the state of Minnesota are far more liberal than defendants' rules governing free transportation of caretakers accompanying the same number of carloads of live stock from the Minnesota points to Sioux City. Complainant contends and the evidence tends to support the contention that defendants' rules for shipments to Sioux City are unjustly discriminatory and subject complainant and its members to undue prejudice to the advantage of South St. Paul. The rules in question provide for the free transportation in both directions of caretakers accompanying carload shipments of live stock from Minnesota points to St. Paul but not to South St. Paul, and it is not of record that any free transportation is accorded by the switching line between St. Paul and South St. Paul. Such real discrimination as may exist on traffic to South St. Paul as a result of the rules governing free transportation of caretakers to and from St. Paul therefore could be removed by defendants, but the evidence is too meager upon which to base a finding relative to proper rules for the future. Therefore no order will be entered at this time. The case will, however, be assigned for further hearing on those questions, and the parties to this proceeding, including the intervener, will be expected to present all relevant facts.

INVESTIGATION AND SUSPENSION DOCKET No. 741.
ST. LOUIS, MO. (CUPPLES STATION), TERMINAL
REGULATIONS.

Submitted May 4, 1916. Decided June 21, 1916.

The Wabash and Chicago & Alton railroads, at Cupples Station, St. Louis, Mo., propose, without charge to the consignee, to unload carload freight onto trucks and lift it, by elevator, from the depressed track level to the station platform on the street level, where the freight will be received from trucks, in some instances at points on the platform contiguous to warehouse doors by certain consignees located in various buildings which stand adjacent to and partially surround the station; and in some instances at a space on the platform opening out on a driveway leading to Spruce street by consignees who have no direct connection with the station and who have to haul away their freight by wagon. Certain warehousemen who receive their carload freight from private sidings, at their own expense for unloading, complain that by reason of the free service described carload shipments of freight, principally pool cars, are attracted through that station that otherwise would come to them for distribution for hire; *Held*, That, although about 85 per cent of the station's freight is handled for consignees with warehouses immediately adjacent to the station platform, Cupples Station is a bona fide railroad station, and that under the peculiar conditions there existing the practice described does not unlawfully discriminate against other shippers who receive freight through the station or in favor of all patrons of the station against receivers of freight from team tracks, private sidings, or other public freight stations in St. Louis; and that the arrangement under which Cupples Station is operated is unusual but not in itself unlawful, and upon this record is not shown to result in discrimination between patrons of the station or otherwise to be in violation of the act to regulate commerce.

N. S. Brown for Wabash Railway Company.

Silas H. Strawn and *G. A. Kelly* for Chicago & Alton Railroad Company.

John S. Burchmore and *Luther M. Walter* for shippers appearing on behalf of respondents.

Thomas S. McPheeters for protestants.

REPORT OF THE COMMISSION.

DANIELS, Commissioner:

The Wabash and Chicago & Alton railroads have each sought to provide by the tariffs here involved that—

on account of the unusual physical conditions existing at Cupples Station, St. Louis, Mo., this company will load and unload through its freight house or over its platform at Cupples Station carload package freight handled to or from this station at the carload rate.

The practice described had hitherto been followed by the carriers using Cupples Station for a number of years, without tariff authority. In June, 1915, it was discontinued following inquiry by one of the protestants herein concerning the tariff authority for the practice and complaint against its continuance. Later the above tariff provision was filed by the two carriers named, to become effective November 20, 1915, as concerns the Wabash, and November 25, 1915, as concerns the Chicago & Alton. We have suspended the operation of the provision until September 19, 1916, pending this investigation. The protestants, with one exception, are warehouse companies of St. Louis.

The practice of loading and unloading free at Cupples Station is also followed with respect to less-than-carload freight but the latter is not here in issue. As to less-than-carload freight the practice is the usual one among carriers. As to carload freight it is the exception.

Cupples Station is in what is known as Cupples Block, a series of adjoining buildings constructed over and adjacent to the tracks of the Terminal Railroad Association just beyond their point of emergence, near Eighth and Spruce streets, from the mouth of a tunnel and leading from the west end of the Eads bridge to the union station. At this point, which is only six blocks from the heart of the city's retail district, the three main tracks curve from the south to the west and are below the street level. Five switch tracks which project from the outer edge of the curve back eastward and two switch tracks which project from the other side of the curve westward and parallel the terminal's main tracks on the north, constitute, with one other track to the north of the five first described, the tracks of Cupples Station. Over these tracks on the street level are platforms roofed over and connected by a bridge built over the terminal association's main tracks. These platforms and connecting bridge constitute the station's platform for the receipt and delivery of freight. The offices of the station are in a subfloor between the track and platform levels.

The tracks below the platform will accommodate about 50 cars at one setting, but are not accessible for team-track delivery. Freight is therefore unloaded from the cars onto trucks and lifted, while on the trucks, to the platform by elevators, of which there are eight located at different points contiguous to the tracks. All this service is performed by station employees. There are nearly 5,000 trucks in station use. The main platform space devoted to station use and on which freight is delivered by the carriers comprises about 30,000 square feet. An additional space of 17,249 square feet is utilized to provide passageways for tenants, but is not used by the carriers. There are 18,028 square feet of station space on the subfloor and 45,166 feet on the track level. The record is not entirely clear

whether all of the latter is used by the carriers. The platform space contiguous to the tracks is 37,537 square feet.

In 1914, 249,163 tons of freight, 141,838 tons inbound and 107,325 tons outbound, were handled through Cupples Station, divided about equally between carload and less-than-carload traffic.

In the buildings immediately adjoining the station platform in Cupples Block are the warehouses of some 20 or more industrial enterprises, including such large concerns as the Simmons Hardware Company, the Samuel Cupples Woodenware Company, and the Goddard Grocer Company. We shall refer to these tenants of Cupples Block as "tenants." The shippers who are not located contiguous to the station platform we shall designate as "outside shippers." In 1914, 84.4 per cent of the station's freight was handled for tenants and 15.6 per cent for 191 outside shippers.

The tenants' inbound freight is trucked from the elevator, by station employees, to convenient points of receipt on the station platform opposite their warehouse doors for distances on the track and platform levels ranging from 20 to 500 feet, dependent upon the distance from the car to the nearest elevator, the location in the block of the particular industry served, and the degree of platform congestion, the main difference in length of haul being on the platform level. The outside shippers' inbound freight is trucked in like manner to that part of the station platform which opens out on a driveway leading to Spruce street and which is accessible by wagon. The entire expense incurred between car and final point of receipt or delivery on the platform, with respect to both tenants' and outside shippers' freight, including labor and all facilities, is borne by the carriers. All freight for both classes of shippers is received from the truck and always on the station platform. The tenants' inbound freight is taken into their warehouses on the trucks by their own employees and handled thence with their own elevators and other equipment, except that the station and tenants have joint use of the trucks. The outside shippers' inbound freight is unloaded from the trucks into wagons and hauled away at their own expense.

The protestants, with one exception, are warehousemen. They are also outside shippers who receive and deliver their carload freight from private sidings contiguous to their warehouses, at their own expense for loading and unloading. They frequently handle pool cars; that is, cars containing small lots of freight destined eventually for various consignees and which the manufacturer or jobber bills to the warehousemen as a carload, at the carload rate, and which the warehousemen distribute for hire. The warehousemen complain that by reason of the free unloading of carload freight at Cupples Station many of these cars for outside shippers are attracted through that station whereas these cars would otherwise come to their warehouses

for distribution and that the practice above described unduly prejudices them and their customers and gives an undue advantage to the tenants over outside shippers. In order to prevent congestion the carriers also assort to some extent at least this pool-car freight on the station platform, and this sorting service is an additional advantage to the patrons of Cupples Station according to the contentions of the protestants. One of these warehousemen is also a shipper of commercial freight on his own account, and one of the protestants is a manufacturer, and not a warehouseman, and competes with certain of the tenants as to some commodities. No pool-car freight is handled through the station for tenants.

The protestants rest their case on the contention that Cupples Station is not a bona fide railroad station, but on the contrary is primarily a convenience for tenants, whose use is avowedly extended to outside shippers only to give color of lawfulness to its primary use. The protestants say in their brief that—

Cupples Station is not a public freight station and should be listed and treated as any other private siding. We are willing to admit that if the foregoing statement is incorrect either as a matter of fact or a matter of law, that then these protestants have no ground of complaint, but if we are correct in this position, then it follows necessarily that the practices at Cupples Station are and have been illegal and that that part of the tariffs in question which attempts to cover these practices must be permanently suspended.

Cupples Station is operated under conditions which are unusual. Cupples Block, including the Cupples Station and tracks, is owned by Washington University of St. Louis. It was constructed in 1889, by Messrs. Cupples and Brookings, through a holding corporation, upon agreement on the part of the railroads perpetually to maintain a joint union freight station therein and to extend its use to patrons at the St. Louis rate. Later it was deeded to Washington University as a part of its endowment fund. The respondents and tenants therefore rent from the same landlord. Formerly the railroads made an allowance of 20 cents per ton apparently to the owners of the Cupples Block property, which was estimated to about equal the costs of handling all freight. This method was discontinued effective January 1, 1908, since which time the arrangement has been that—

The Terminal Railroad Association will pay monthly for rental and service of the terminal instrumentalities furnished at Cupples Station an amount equal to the labor cost of loading and unloading there; that is, the handling between platform and car, including waybilling and such other necessary clerical hire as is usually employed at other union freight stations; also maintenance expense of tracks and platforms, watchmen, light, and power; Cupples Station to furnish with their monthly bills a statement showing the tonnage handled for each line to enable the terminal association to charge them accordingly, the arrangement to continue for one year and thereafter until either party gives three months' notice of cancellation.

No additional charge is made to the carriers for rental of the station building or for the facilities employed. The opinion is expressed by one of the tenants that the carriers could not to-day duplicate the station facilities, including the real estate, for less than \$2,000,000. The trucks alone are said to be worth from one hundred to one hundred and fifty thousand dollars.

The advantage to Washington University in the foregoing arrangement lies in the rentals which it may charge the tenants by reason of their advantage of location contiguous to a freight station and their being accorded such convenient delivery of carload freight.

The direct administration of Cupples Station is by what is known as the Cupples Station Committee, which is appointed by Washington University. The committee as now constituted consists of those connected with the larger tenant industries of Cupples Block which have been previously named. The committee assumes charge of all operation, hires the employees, pays them and all other station expenses in the first instance, and bills monthly on the Terminal Railroad Association for the full amount in accordance with the agreement above quoted. The cost of operating the station in 1914 was about \$83,000.

No member of the station committee receives any salary and the committee has no assets. Since free loading and unloading was discontinued as to carload freight, in June, 1915, the committee has held in abeyance any charge therefor against the shipper for that class of freight, and has advanced to the terminal association the amount accruing thereon, pending settlement of the matters involved in this investigation, from money borrowed for the purpose from the Cupples Woodenware Company, one of the tenants of Cupples Block.

The method described of acquiring station facilities by the railroads is unusual, but so far as appears, is not in itself unlawful. No tenant is a party to the agreement between the university and the carriers nor receives any preferential treatment thereunder over outside shippers, unless possibly as a member of the station committee in shaping the administration of the station, and no undue preference has been established or specifically alleged on that score. Washington University, the landlord of both respondents and tenants, receives as a shipper only school supplies, and can hardly be viewed in this proceeding as an interested shipper.

But the protestants aver that Cupples Station has never been intended for the use of outside shippers nor much used by them in the past, and they point to certain facts of record bearing upon the assertion. The record does show, as above stated, that only about 15 per cent of the station's total freight is handled for outside shippers; that the Cupples Station Committee would prefer not to handle their freight at all, especially pool cars, which, if not promptly

removed, tend to congest the passageways; and that the driveway for this freight is only 50 feet wide at the platform, with room for only five wagons at a time, and narrows down to 25 feet at the Spruce street exit. But it further shows that, although prior to 10 or 15 years ago the station was not used by the outside public to any appreciable extent, at no time and in no case has anyone, tenant or outside shipper, been denied the free, prompt, and full use of the station on equal terms with everyone else, and it has not been shown that outside shippers have experienced any difficulty from wagon congestion in removing their freight from the station nor in delivering it thereat. The chairman of the station committee, who has been chairman since its inception, stated that he had never received any complaint from outside shippers of inadequate facilities or discriminatory treatment prior to the protests made in this proceeding.

Should the protestants use Cupples Station they would receive identical treatment with tenants; that is, truck receipt and delivery of their freight at a point on the station platform most convenient for wagon receipt, or delivery in the same fashion as the tenants would enjoy truck receipt or delivery at points on the station platform most convenient for trucking into or out of their warehouses. The protestants' real contention in this respect seems not to be that they would be treated differently in the use of the station, but rather that, having their own private sidings for carload freight, they would rarely, if ever, find it more advantageous to haul by wagon to or from the station than to load direct from or into their warehouses into or from the cars.

In the operation of the station the respondents, so far as appears, are not required under the agreement to place freight for anyone, tenant or outside shipper, at any particular location on the station platform. It is placed at points most convenient for the different consignees merely as a matter of practical operation. The outside shipper has free access to any part of the station platform the same as the tenant has, and would be required to accept or deliver his freight if placed farther to the inside than now from the driveway, just as the tenant would be compelled to accept his freight if placed farther from his warehouse and nearer the driveway, should congestion or other emergency require such departures in the utilization of platform space.

The criterion of a place being a public station is the offer and capacity adequately to serve, without discrimination. In *Manufacturers Ry. Co. v. St. L., I. M. & S. Ry. Co.*, 21 I. C. C., 304, 313, in determining the status of a short line of railway as a common carrier, we said that we would not assume authority—

to outlaw any common carrier by rail at common law, as modified by constitutional or statutory authority, and thus put it out of business or deny its use to the public, so long as it is willing to hold itself out as a common carrier and perform its functions as such.

We must hold the same opinion here with respect to a necessary instrumentality of that service. If the facilities for outside shippers at Cupples Station were inadequate, or inaccessible, or unfairly employed, or were plainly a blind for preferences to tenants, another and a different situation would be presented. But upon this record, although, as stated, the Cupples Station Committee would prefer not to handle the freight of outside shippers, the fact is that in actual practice it has never refused such freight, but on the contrary has always received and delivered it on equal terms with the freight of tenants.

The question presented here is not the possible one suggested by the protestants of having "stamped" as a public station a point or building remote from all save one large shipper. Whatever difficulty might arise in such a case does not arise here, where the station is open and accessible to a large shipping public, composed both of tenants and outside shippers. The fact that most of the station's freight is handled for tenants is not in itself controlling. If it is handled on equal terms with the smaller amount of the freight of the outside shippers, the situation in every essential respect is not different from what it would be if the tenants also were situated some distance away from Cupples Station instead of immediately adjacent to its platform. As they appear here, the tenants are a part of the shipping public through Cupples Station, no more and no less.

Much is said by the protestants in the record concerning the adequacy of the station facilities for outside shippers and of the likelihood of congestion should they use the station to any great extent. So far as shown by this record the outside shipper has been adequately taken care of in the past. It further appears that, in case of congestion of the station from an unusual volume of outside shippers' freight, or for other cause, the tenant would be equally affected. Such an emergency would not necessarily prove that Cupples Station was not a bona fide public station, but rather that it was a temporarily inadequate public station, which the carriers should sufficiently enlarge to meet the legitimate demands of all the station's patrons should the congestion become marked and prolonged. Any practice of undue discrimination between patrons in such an emergency or at any other time, during the operation of the station as a public station, might be made the subject of proceedings by formal complaint before this Commission.

Whether the free handling of carload freight at Cupples Station unduly prefers the patrons of that station and unduly prejudices the protestants, who load or unload their freight from cars on private sidings at their own expense, within the meaning of the act, must depend upon the usual test in cases involving discrimination, namely, whether the conditions of transportation are substantially similar in the two cases. It seems to be admitted by all parties to the record that only under the present method of operation can there be avoided the confusion and congestion that would follow an attempt of the various consignees to receive or deliver their freight direct from the cars. As we understand the record, no departure from the present plan is suggested, even by the protestants. It is their contention merely that a charge for the loading and unloading should be assessed.

We must look to the substance rather than to the form in determining whether conditions are substantially similar. A reasonable tender of freight at an accessible point must be made by carriers to consignees under the law. Ordinarily such a delivery is effected by setting the car on a team track or private siding, as the protestants' cars are ordinarily set. But the usual method is not the exclusive method. It is followed because it is the most convenient and practicable under ordinary conditions. The underlying requirement in all cases is that the carrier shall make a practical delivery or afford facility for practical loading. To place the car on the inaccessible subsurface track level at Cupples Station is not to meet this demand, and in unloading the freight from the car and lifting it on trucks to an accessible point of receipt on the station platform the carriers are merely supplying the deficiency, and in effect, though not in form, making team-track or siding delivery. The freight is really in transit until so delivered at an accessible point, as much so as was the freight involved in *St. Louis Terminal Case*, 34 I. C. C., 453, which was hauled by wagon from the east side of the river to off-track stations in St. Louis, where it was delivered at the station warehouse or platform. We held the arrangement there, under the circumstances shown to exist, not to be unlawful or unduly prejudicial or discriminatory.

The same method of handling being employed as to all the Cupples Station freight for tenant and outside shipper, there can be no finding of undue preference among shippers similarly situated. At the protestants' warehouses the conditions of freight delivery are the normal conditions and require no departure from the usual method of effecting that delivery. The patrons of Cupples Station and the protestants, therefore, are not similarly situated. In other words, there is no substantial similarity of conditions. So far as

the record shows, the same may be said with respect to the users of team tracks and other public stations in St. Louis. There being, on the contrary, as between these shippers and facilities and the patrons of Cupples Station and their facilities, a substantial dissimilarity of conditions, and there being no discrimination as between patrons of Cupples Station, there is no basis for finding that an unlawful discrimination exists in favor of tenants over outside shippers or in favor of tenants and outside shippers over the users of team tracks, private sidings, or other public freight stations in St. Louis.

There are phases of this situation that are unusual, but upon this record they have not been shown to be unlawful or to result in unlawful discrimination. We are therefore not warranted, merely because they are unusual, in condemning an arrangement that, on the whole, seems to be of substantial benefit to the city of St. Louis. Approximately, 50 inbound and 50 outbound cars are handled through Cupples Station daily which otherwise would be diverted to team tracks in St. Louis. The team-track facilities are now inadequate for the city's needs. Inbound cars at Cupples Station are loaded outbound within an average of four hours after their arrival, and demurrage there is practically unknown. The testimony indicates that this expeditious handling of freight at this station in the volume stated, and the prompt release of the equipment therein employed, is an important factor in the prevention and relief of congestion of the city's team tracks as a whole.

There is one restriction upon the use of Cupples Station by outside shippers which should be promptly removed. In the matter of drayage, the Cupples Station Committee requires that outside shippers shall employ a certain drayage company to remove their freight from the station. The committee prefers and designates this company because it always arranges to have wagons at the station and is said to possess ample facilities promptly to remove this freight from the station platform and therefore to prevent congestion there and on the driveway leading from the station to Spruce street. Although this company's charge is the standard one for the service, the regulation that this drayage company shall be exclusively employed is one whose lawfulness is gravely open to doubt and which should be promptly canceled, thereby permitting the outside shippers their choice of agencies of wagon haul.

There is one other practice with reference to tenants of the Cupples Block which appears clearly unlawful and should immediately be discontinued. We refer to the exceptional instances where the car is placed in the lower level directly adjacent to the store door of certain of the tenants, and where the loading and unloading is done on the track level. Here manifestly the cost of loading and unload-

ing must be borne by the tenant and not charged back to the carrier. In this situation the placement is clearly analogous to the ordinary placement of carload freight, and loading and unloading should be at the expense of the shipper or consignee in the ordinary way.

We have referred herein principally to the handling through Cupples Station of inbound freight. Outbound freight through the station is equally involved. It is handled in identically the same way as inbound, except in reverse order, the carriers receiving it from the trucks, where it has been placed by the consignor.

An order will be entered vacating the orders of suspension heretofore entered.

HARLAN, Commissioner, dissenting:

The respondents not only unload the carload freight of the shippers who are tenants of the Cupples Station, but place it on hand trucks and wheel it practically to the doors of the shippers' business establishments at a transportation charge no greater than that paid by the shippers in St. Louis who are compelled to go to the carriers' team tracks for their carload freight and bear the expense of hauling it to their places of business by horse and cart or in other vehicles. The less-than-carload traffic of the station tenants is similarly handled by the respondents without any charge in addition to the less-than-carload rate. All this is obviously a service of special character and of special advantage and value to these particular shippers; and if the tariffs under suspension, instead of merely legalizing for the future what the respondents in the past have been doing without compensation, had proposed for the service a reasonable charge in addition to the St. Louis rate, it would be difficult to find a ground upon which to condemn the charge.

The fact that the respondents, by the tariffs under consideration, have now proposed definite tariff authority for performing the service without charge does not measure the extent either of our duty or of our responsibilities under the act. In my judgment a free special service of this kind, having a distinct advantage and value to the few shippers that may avail themselves of it, is a concession from the St. Louis rate and should therefore be condemned as an unlawful preference. Every special service received by a shipper at the hands of a carrier should bear an adequate charge over and above the transportation rate, and until this principle is insisted upon and the carriers are required to give effect to it, as I have elsewhere urged, we must expect complaints, of the kind here under consideration, by shippers who are unable to avail themselves of such special services but are nevertheless compelled to share in the cost thereof through the rates they pay. Prudent men, who find themselves thus bearing a part of the

cost of special services performed for others, will never be satisfied until such preferences and inequalities are removed.

For these reasons I am unable to concur in the report of the majority.

HALL, *Commissioner*, dissenting:

Before the tariffs here under suspension were filed the protestants made complaint to the carriers serving Cupples Station that the methods used in its operation resulted in the loading and unloading of carload freight by the railroads without authority. There followed a joint investigation of these methods by the St. Louis roads, and a reference of the resulting report to a committee of carriers' counsel for advice as to the lawfulness of what was being done.

The investigating committee reported, among other things, that—

Cupples Station differs from the ordinary railroad freight station in that it was not first intended to serve anyone except tenants of the Cupples Block, but when it was found that to legally operate it as a freight station it would be necessary to receive freight from and deliver it to shippers and consignees outside of Cupples Block, a small space was set aside for that purpose.

And the committee of counsel said:

The station service for the general public, it appears, was established only to give color to the bona fide character of this station.

These excerpts from the record succinctly state one aspect of the situation which is abundantly established by the evidence.

As it was in the beginning it has been ever since. Some of the largest tenant shippers of Cupples Block make up the Cupples Station Committee. As such they control the operation of the station. They employ the station agent and his subordinates. They and not the railroads fix the pay and "hire and fire" the employees of this "public" railroad station. They admit that they do not care to handle freight for people outside of the station, and would be glad if such people would not avail themselves of it. Especially is this so of "pool cars."

It is shown in the majority report that in 1914, 15.6 per cent of the station's freight was handled for 191 outside shippers. The carriers' investigating committee found that this amounted to 38,904 tons, of which 9,488 tons were for tenants of Washington University occupying buildings having no physical connection with the station. But, speaking of the remainder, 27,215 tons inbound and 2,201 tons outbound, that committee reported:

Practically all of the freight delivered to these 195 firms is carload freight ~~that is~~ received at the station from various cities and which is distributed to the ~~by~~ by the agent upon instructions direct from shippers or from brokers. A is from trap cars originating within switching limits. There is no ~~of~~ this service against either consignee or shipper.

Of the 2,201 tons shown as received from the general public for forwarding, originating outside the station, all originates from carloads distributed inbound at Cupples Station and reshipped by direct rail lines. Practically no tonnage, less than carload, received at the station for forwarding outside Cupples Block. Practically no tonnage received from outside firms by wagon for forwarding.

It thus and otherwise appears that practically no tonnage is handled for outside shippers except pool-car tonnage, and the special antipathy of the Cupples Station Committee to pool cars is explained. The chief complaint of the protestants is against the free handling of these same pool cars. Why can we find no solution satisfactory to both of these dissatisfied parties? Manifestly because the exclusion of this pool-car tonnage from Cupples Station, already confined, as it is, to package freight, would take away the only color of public service now attaching to it.

Physically, Cupples Station has not the location, characteristics, or facilities of a public freight station. It is inconceivable that any railroad would erect such a station in a hollow square, bounded by private buildings. Subsurface to one abutting street, and level with another, its tracks have been so planned and located that teams can not reach them from either street. Where tracks and street are on the same grade, that portion of Cupples Block between the two is leased to the largest of the tenant shippers instead of being thrown open to the public for receipt and delivery of freight. No loading and unloading platforms are provided for drays. The "peculiar conditions" there existing were created, not encountered, and created to enhance the rental value of Cupples Block. The chairman of the Cupples Station Committee was asked why the tenant shipper did not have an advantage over a nontenant competitor whose expense for unloading was \$1.80 per car, and replied:

* * * that can be easily explained on the ground that the Cupples Woodenware Company, which pays no cost of unloading that particular car has in fact paid a whole lot more than that \$1.80 for the location which puts them adjacent to a joint union station * * *. In the cost of their building * * * that was the theory upon which the entire investment was made, as I understand it, and the railroads maintained this freight station because of the very large amount of tonnage tributary to it, and by reason of securing all that tonnage the owners of the property charge a rental higher than otherwise is charged, because they have spent all that money to provide these facilities.

The advantage which the owner of Cupples Block can give the tenant shippers will, under the suspended tariffs, cost the railroads many thousands of dollars per annum. It will cost that owner nothing. This most excellent facility, from the tenant shippers' standpoint, may well be perpetuated for their benefit, but not at the expense of the railroads.

The Commission here sanctions the loading and unloading of carload freight at the expense of the carrier, contrary to the usage elsewhere in St. Louis and generally throughout the United States, and the equivalent, in a lesser area, of the free store-door delivery which it condemned at Baltimore and Washington. *Merchants & Mfrs. Asso. v. B. & O. R. R. Co.*, 30 I. C. C., 388; *Chamber of Com., Washington, D. C., v. B. & O. R. R. Co.*, 30 I. C. C., 446.

I do not understand that a rebate or concession must involve discrimination, or be given to a shipper or consignee, in order to constitute a violation of the Elkins act. The practice approved by the majority report is to my mind a concession. Only two carriers propose it. The stress of competition will soon force the others to do the like.

For these reasons I feel compelled to record my dissent. .

40 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 772.
MOLASSES FROM TEXAS AND LOUISIANA.

Submitted June 9, 1916. Decided July 5, 1916.

1. Proposed increased carload rates on domestic molasses (other than blackstrap) from New Orleans and other Louisiana and Texas points, to points on Ohio, Mississippi, and Missouri rivers and to points in the states of Tennessee, Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, South Dakota, Iowa, and Missouri, found justified.
2. Proposed increased rates on molasses (other than blackstrap) from the same originating points to points west of the west bank of the Missouri River and west of the line of the Kansas City Southern Railway, except Lincoln, Nebr., and Fort Scott, Kans., found not to have been justified.
3. Proposed increased rates on domestic blackstrap, carloads, in tank cars, from New Orleans, La., and other Louisiana points, Mobile, Ala., Gulfport, Miss., Pensacola, Fla., and other points, to Memphis, Tenn., St. Cloud, Minn., and Missouri River cities found justified.
4. Proposed increased rates on domestic blackstrap, carloads, in tank cars, from the same originating points to points in Kansas and Oklahoma and to Fort Calhoun, Nebr., found not to have been justified.

W. W. Ingalls, jr., for Penick & Ford, Limited.

R. D. Sangster for Kansas City and St. Joseph protestants.

Edward P. Smith for Omaha protestants.

A. D. Beals for commerce counsel of Iowa and shippers of Iowa.

H. D. Driscoll for Topeka Traffic Association, Topeka, Kans.

W. V. Hardie for Oklahoma Traffic Association, Oklahoma City, Okla.

R. Walton Moore and *Frank W. Gwathmey* for Illinois Central Railroad Company, Yazoo & Mississippi Valley Railroad Company, New Orleans & Northeastern Railroad Company, and Mobile & Ohio Railroad Company.

Edward D. Mohr for Louisville & Nashville Railroad Company.

T. J. Norton, Silas H. Strawn, R. B. Scott, W. F. Dickinson, W. T. Hughes, F. H. Wood, J. M. Souby, C. S. Burg, Thomas Bond, George Thompson, N. S. Brown, Henry G. Herbel, and Fred G. Wright for other respondents.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

The commodities as to which the transportation rates are here involved are molasses and blackstrap. The former is the ordinary

commercial article, produced from sugar cane, suitable for human consumption and generally so used. The latter is a low-grade sugar-cane product containing less sugar than the higher grade molasses, and is used principally as a sweetening in the manufacture of mixed stock feed.

All molasses, including blackstrap, is rated fifth class in carloads in official, southern, and western classifications. The latter provides class C on blackstrap in tank cars.

By tariffs published to become effective January 1 and 10, 1916, respondents propose to increase the rates on domestic molasses from New Orleans and Louisiana and Texas producing points, on imported and domestic blackstrap from Gulf ports and on domestic blackstrap from producing points in Louisiana to northern points. Protests were made against the proposed rates both on the imported and domestic commodities. The import rates were permitted to become effective, but the proposed increased rates on the domestic commodities were suspended, first until April 30, 1916, and later until October 30, 1916.

All rates herein are stated in cents per 100 pounds.

The proposed rates on domestic molasses apply from New Orleans, La., and from Louisiana and Texas points to Mississippi River and Ohio River points; to Nashville and Clarksville, Tenn.; points north of the Ohio and east of the Mississippi rivers; to interior points west of the Mississippi River in the states of Minnesota, Iowa, Missouri, South Dakota, Nebraska, Kansas, Oklahoma, and Arkansas, and to the Missouri River cities. The proposed increase on this commodity is 2 cents to points in the territory described except to points in western Oklahoma; Oklahoma City, Okla.; Memphis, Tenn., and certain intermediate points to which 5-cent increases are proposed. At the hearing respondents stated their willingness to reduce to 2 cents the proposed increases to Oklahoma City and points intermediate on the Missouri, Kansas & Texas and the Chicago, Rock Island & Pacific railways to conform to the proposed increases to competing points in eastern Oklahoma and Kansas.

The suspended schedules also propose increased rates on domestic blackstrap molasses, hereinafter termed blackstrap, from New Orleans; Louisiana producing points; Mobile, Ala.; Gulfport, Miss.; Pensacola, Fla., and other points, to Memphis; St. Cloud, Minn.; Missouri River cities and interior points in Oklahoma and Kansas. The tariffs provide rates on blackstrap dependent upon its value; the lower rate, being 2 cents less than the higher rate, is dependent upon a declared value of 8 cents or less per gallon, and will for convenience hereinafter be referred to as the conditional rate; the

higher rate is dependent upon a declared value in excess of 8 cents per gallon, and will hereinafter be referred to as the unconditional rate. The tariffs propose to increase the rate on both grades of blackstrap 4 cents except as hereinafter noted.

The destination territory affected by the proposed rates on molasses lends itself to geographical divisions which it will be convenient to observe in the discussion of the facts and which may be defined as follows: First, points on the Mississippi River from Baton Rouge north; second, Nashville and Clarksville, Tenn., in their relation to points in the southeast; third, Ohio River crossings; fourth, points in central freight association territory; fifth, the Missouri River cities; and sixth, interior points in the territory west of the Mississippi River.

For a number of years there has been a rate of 10 cents from New Orleans to Memphis which until recently was not exceeded at intermediate points on the river. To some of the intermediate points increased rates were published January 1, 1916, contemporaneously with the increased rates here under suspension, thus creating fourth section departures. The present and proposed rates on molasses from New Orleans to Memphis and intermediate points is shown in the following table:

Y. & M. V. R. R. points between New Orleans and Memphis.	Miles from New Orleans.	Present rates.	Proposed rates.
Baton Rouge, La.....	89	8	8
Natchez, Miss.....	214	12	12
Vicksburg, Miss.....	235	13	13
Greenville, Miss.....	317	13	13
Rosedale, Miss.....	355	10	15
Dickerson, Miss.....	395	10	15
Friar's Point, Miss.....	396	10	15
Helena, Ark.....	409	10	15
Memphis, Tenn.....	455	10	15

It is observed that the river points to which changes are proposed are all north of Greenville, Miss.

The only points in southeastern territory to which increased rates are proposed are Clarksville and Nashville, Tenn. It will be sufficient to consider the latter point. Pursuant to Fourth Section Order No. 3866, entered as a result of investigation into *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, the carriers have made a general revision of class and commodity rates from New Orleans into southeastern and Mississippi Valley territories. The revision of molasses rates from New Orleans proposed in the schedules under suspension is asserted by respondents to be required by the

revision already made in the general adjustment of rates to the southeast. The testimony of respondents is that the proposed increase to Nashville is necessary in order to maintain long standing relationships which in part, at least, have been prescribed by the Commission. For instance, the rate from New Orleans to Nashville sustains a certain relation to the rates from New Orleans to other southeastern points, such as Chattanooga, Birmingham, and Atlanta. Moreover, the New Orleans-Nashville rate has long been the same as the New Orleans-Louisville rate, for the reason that in *Phillips, Bailey & Co. v. L. & N. R. R. Co.*, 8 I. C. C., 93, in which the reasonableness and propriety of rates on sugar and molasses from New Orleans to Nashville, as compared with rates from New Orleans to Louisville, was considered, the Commission held that there was not such a dissimilarity of circumstances and conditions as to justify the charging of higher rates to Nashville than to Louisville.

The rates from New Orleans to Louisville are necessarily adjusted with relation to the rates to other Ohio River crossings and, in turn, to the rates to St. Louis and lower Mississippi River crossings. Thus, it is asserted, a revision of the rates to the Ohio and Mississippi river crossings is necessarily coupled with the revision of the rates which was made to the southeastern points pursuant to the Commission's order in *Fourth Section Violations in the Southeast, supra*.

The general basis for rates on molasses from New Orleans to central freight association territory was originally, and to a considerable extent is still, the lowest combination to and from the Ohio River crossings. There may be exceptions to this general basis due to the effect of competitive conditions. Apparently, therefore, the conditions which have determined the measure of the rates to the Ohio and Mississippi river crossings have been reflected in the rates to points in central freight association territory. The general adjustment of rates to southeastern points, Ohio and Mississippi river crossings, and central freight association territory points, may therefore be described as an interlocking one. A comprehensive view of the present and proposed rates to this entire territory is afforded by the following comparisons compiled from exhibits of record.

Statement showing present and proposed rates on molasses from New Orleans, La., to points in southeastern territory, Nashville, Tenn., Ohio and Mississippi river points and points in central freight association territory, together with distances and per ton-mile earnings under present and proposed rates.

New Orleans to—	Distance.	Present rate per 100 pounds.	Proposed rate per 100 pounds.	Per ton-mile earnings under present rates.	Per ton-mile earnings under proposed rates.
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Mills.</i>
Southeastern points:					
Atlanta, Ga.....	493	32.0	.....	13.8	.....
Augusta, Ga.....	638	32.0	.....	10.0	.....
Birmingham, Ala.....	355	26.0	.....	14.6	.....
Bristol, Va.-Tenn.....	740	38.0	.....	10.3	.....
Chattanooga, Tenn.....	498	32.0	.....	12.9	.....
Columbus, Ga.....	410	32.0	.....	15.6	.....
Decatur, Ala.....	403	32.0	.....	13.0	.....
Columbia, S. C.....	721	34.0	.....	9.4	.....
Johnson City, Tenn.....	715	38.0	.....	10.6	.....
Knoxville, Tenn.....	609	33.0	.....	10.8	.....
Macon, Ga.....	512	32.0	.....	12.5	.....
Montgomery, Ala.....	318	26.0	.....	16.4	.....
Selma, Ala.....	361	26.0	.....	17.3	.....
Jackson, Tenn.....	442	25.0	.....	11.3	.....
Paris, Tenn.....	501	28.0	.....	11.2	.....
Valdosta, Ga.....	503	34.0	.....	13.5	.....
Savannah, Ga.....	656	24.0	.....	7.3	.....
Nashville, Tenn.....	562	21.0	23.0	7.5	8.2
Ohio and Mississippi river crossings:					
Cairo, Ill.....	566	19.0	21.0	.....	7.42
Evansville, Ind.....	692	21.0	23.0	6.1	6.6
Louisville, Ky.....	748	21.0	23.0	5.6	6.2
Cincinnati, Ohio.....	836	23.0	25.0	5.5	6.0
St. Louis, Mo.....	767	21.0	23.0	5.9	6.6
Central freight association territory points:					
Peoria, Ill.....	838	27.0	29.0	6.4	6.9
Indianapolis, Ind.....	861	27.0	29.0	6.3	6.7
Chicago, Ill.....	920	27.0	29.0	5.9	6.3
Columbus, Ohio.....	952	29.0	31.0	6.1	6.5
Fort Wayne, Ind.....	956	30.0	32.0	6.3	6.7
Milwaukee, Wis.....	1,005	29.0	31.0	5.8	6.2
Toledo, Ohio.....	1,037	32.0	34.0	6.2	6.6
Battle Creek, Mich.....	1,055	32.0	34.0	6.1	6.5
Cleveland, Ohio.....	1,079	32.0	34.0	5.9	6.3
Detroit, Mich.....	1,094	32.0	34.0	5.9	6.2
Grand Rapids, Mich.....	1,097	33.5	35.5	6.1	6.5
Bay City, Mich.....	1,171	35.0	37.0	6.0	6.3

Considerations of relationship which respondents testified prompted them to publish the increased rates to the Mississippi River crossings and to Ohio River crossings and points north thereof is said to have impelled them to make like increases to the territory west of the Mississippi River, particularly to the Missouri River crossings and to interior points in Nebraska, Kansas, Oklahoma, and Arkansas.

The present and proposed rates and the revenue yielded thereby to points in the territory west of the Mississippi River are shown in the statement on the following page, compiled from one of respondents' exhibits.

Statement showing present and proposed rates on molasses from New Orleans to points named, together with the short-line distances and per ton-mile earnings which would be yielded by the proposed rates.

New Orleans to—	Distance.	Present rate.	Proposed rate.	Per ton-mile earnings under proposed rate.
	Miles.	Cents.	Cents.	Mills.
Omaha, Nebr.....	1,061	32	34	6.40
Atchison, Kans.....	914	30	32	7.00
.....	867	30	32	7.38
.....	927	30	32	8.90
.....	923	27	29	6.28
.....	1,061	29	31	6.84
.....	930	29	31	6.68
.....	1,041	32	34	6.53
.....	1,155	34	36	6.23
.....	1,168	56	56	9.03
.....	1,154	56	56	10.06
.....	1,072	55	57	6.90
.....	712	46	46	12.48
.....	1,053	56	58	11.01
.....	781	30	32	8.19
.....	1,020	58	60	11.78
.....	934	40	42	8.00
.....	844	52	54	12.79
.....	862	60	62	14.28
.....	718	50	55	15.32
.....	709	50	55	13.76
.....	712	45	50	14.04
.....	606	35	37	12.21
.....	661	42	42	12.32
.....	573	28	30	10.47
.....	378	25	27	14.27
.....	477	22	24	10.06

The principal reason assigned by respondents in justification of these proposed rates is, as already indicated, the maintenance of relationships long established. The expediency of maintaining these former relationships in the proposed rates in order to avert complaints of discrimination is also suggested, but the respondents have presented other evidence to show that the proposed rates are reasonable comparatively. They compare the proposed rate of 15 cents to Memphis, yielding 7.59 mills for a 395-mile haul with the present rate of 26 cents to Birmingham, yielding 14.6 mills for a 355-mile haul; 32 cents to Atlanta, yielding 13.8 mills for a 498-mile haul; and 26 cents to Montgomery, yielding 16.4 mills for a 318-mile haul. The proposed rate to Memphis is contended to be still exceedingly low, as the result of water competition which respondents must continue to meet, and low as compared with the general level of rates in the southeastern and Mississippi Valley territories. It is urged that the proposed rate of 15 cents would make a better alignment with rates to the southeast and to Mississippi River points south of Memphis which have already been increased. Likewise it is contended that the rates to the upper Mississippi River crossings, the Ohio River crossings, and the points in central freight association territory, all being affected by water competition, are lower than they would otherwise be and are low compared with the

rates to points in the southeast. Comparisons are made of the rates to Cairo, St. Louis, Louisville, and other Ohio and Mississippi river crossings with rates to representative southeastern points, such as Birmingham, Ala., Columbus, Macon, Valdosta, Augusta, and Savannah, Ga., Knoxville and Bristol, Tenn. The comparative rates, distances, and ton-mile earnings yielded by these rates are shown in the table second above. Respondents also compare the proposed rates from New Orleans with class rates which apply on molasses from Atlantic seaboard to central freight association points and the New York-Chicago rate is cited as being $2\frac{1}{2}$ cents more than the proposed rate from New Orleans to Chicago, the former yielding 6.93 mills per ton-mile and the latter 6.34 mills, for practically equal distances. The comparison loses in persuasive force, however, because it is not shown that any substantial volume of molasses or sirups moves from New York to Chicago.

Respondents direct attention to the fact that the density of traffic and earnings per mile of road in the eastern district, which takes in central freight association territory, are very much greater than in the southern and western districts.

Glucose, or corn sirup, is produced in large quantities at St. Louis, Mo., Granite City and Alton, Ill., Clinton, Davenport, and Keokuk, Iowa, and is distributed widely throughout central freight association and southeastern territories. Respondents introduced statements which show that the rates on glucose from the points named to representative points in central freight association territory and Iowa are invariably higher for shorter distances than the proposed rates on molasses to Memphis and the upper Mississippi and Ohio river crossings. A statement was also introduced comparing the present and proposed northbound rates on molasses with the fifth-class and specific southbound rates on molasses, canned fruits, vegetables, soups, and other commodities, of which there is a substantial movement. From this statement it appears that the southbound rates on the latter commodities are higher than the proposed rates on molasses northbound.

In justification of the proposed rates on molasses to the Missouri River cities and other points west of the Mississippi River, respondents say that a close relationship has long existed in the rates from New Orleans to such points, particularly on what are sometimes referred to as the Louisiana products, such as sugar, rice, molasses, tar, turpentine, etc. It is true that the relationship of rates on these commodities as between interior jobbing points in Oklahoma, Kansas, and Nebraska on the one hand and Missouri River and Mississippi River points on the other hand has been considered by us in numerous cases. Fort Scott, Kans., Joplin and Springfield, Mo., take the Missouri River rates on molasses and blackstrap, Joplin being inter-

mediate New Orleans to Kansas City via the Kansas City Southern route through Shreveport, La., and Springfield and Fort Scott being intermediate via the St. Louis & San Francisco route through Memphis.

Respondents further support their contention that the proposed molasses rates to points west of the Mississippi River are reasonable by comparisons with the rates on other commodities moving from New Orleans, such as cottonseed oil, rice, coffee, and canned goods, but the proposed molasses rates do not appear to sustain any consistent relationship to the rates on the commodities with which comparison is made. The molasses rates are higher than the rates on cottonseed oil, which moves almost wholly in tank cars, but so far as the record shows does not move in any considerable quantity from New Orleans to the interior points west of the Missouri River. The molasses rates are higher in the majority of instances than the rates on rice, and this comparison fails to be of material value since the rates on the latter commodity are themselves proposed to be increased in Investigation and Suspension Docket No. 769. The rates on molasses are higher than the rates on coffee to 11 selected points in respondents' exhibit and lower to 6 other points. The molasses rates are lower than the canned goods rates in all instances except one, viz, Wichita, Kans., to which point the proposed rate on molasses is the same as the present rate on canned goods. Moreover, the rates on molasses vary in their relationship to the rates on the other commodities to all points named.

The proposed rates on molasses are less to all the territory involved than are the corresponding class rates. To Mississippi River crossings and points east thereof the commodity rates are very much less than the class rates; to Missouri River points and points in Nebraska, Kansas, Oklahoma, and Arkansas the molasses rates are also below the corresponding class rates, but the difference is not as marked as it is east of the Mississippi River.

Comparison is made of the proposed rates from New Orleans with rates on sorghum sirup from Fort Scott, Kans., to various points. The general effect of the comparison tends to show that the proposed rates are relatively low for equal distances.

Substantially the only evidence adduced by protestants in opposition to the proposed increased rates on molasses is that presented by the principal shipper of this commodity from New Orleans. The only brief on the subject was filed by this protestant. Its objections are grounded largely upon alleged commercial and competitive conditions. The former are not competent or relevant to the issue of reasonableness of the rates here under suspension. With respect to the question of discrimination, protestant asserts that the rates from New Orleans to the territory east of the Mississippi River, the Mis-

souri River cities, and trans-Missouri River territory are unjustly discriminatory against New Orleans in favor of Texas producing points. It prays that the proposed rates from New Orleans be denied, but that the proposed rates from Texas producing points be permitted to become effective in order "to partly remove the discrimination existing against New Orleans and Louisiana producing points." Much of the matter in protestant's brief relates to alleged facts concerning which no evidence was introduced upon the hearing. Its contentions in respect of the discrimination alleged in favor of Texas producing points are purely argumentative and are not supported by any evidence of record.

Protestants' contentions in respect to the reasonableness of the proposed rates on molasses appear to depend largely, if not wholly, upon the theory that the molasses rates should bear a fixed relation to rates on sugar. It argues that molasses is a secondary or by-product obtained in the manufacture of sugar from sugar cane and is of less value and greater weight than sugar, the primary product; that respondents have not shown any instance where a secondary or by-product, even of less weight or value, takes a higher rate than the primary product; and that in making the rates on molasses from New Orleans respondents have departed from the "theoretical basis of freight classification" in respect of the elements of bulk, value, risk, loading, etc. It contends that respondents have discriminated against molasses "by rating it in relation to sugar and other commodities higher than is done generally throughout the country and higher than is done in particular on shipments out of the basing points and common points to which we ship or with which we compete."

The record is wholly devoid of any persuasive evidence that any unjust discrimination results from the maintenance of higher rates on molasses than on sugar. Both are produced from sugar cane but they differ materially, not only in their inherent characteristics, but in the conditions and circumstances affecting and controlling their transportation. No reason appears from the record in this case why molasses rates from New Orleans to the territory here involved should bear any definite or fixed relationship to the rates on sugar from New Orleans to the same points.

Sugarland, Tex., is taken by respondents as the typical producing point of Texas molasses. The rates from such points sustain a definitely fixed relationship to the rates from New Orleans, being 5 cents higher from Texas to points on and east of the Mississippi River; 2½ cents higher from Texas to points between the Mississippi and Missouri rivers; 2½ cents less from Texas than from New Orleans to points on the Missouri River and 5 cents less from Texas than from

New Orleans to trans-Missouri territory, including Oklahoma. The rates from Sugarland are proposed to be increased in the same degree as the rates from New Orleans, viz, 2 cents, except that to certain points in Oklahoma to which the proposed increase from New Orleans is 5 cents the proposed increase from Sugarland is only 2 cents.

The respondents in support of the reasonableness of the proposed rates from Sugarland submitted similar evidence to that adduced in support of the proposed rates from New Orleans and no special discussion of the evidence bearing upon the rates from Sugarland is deemed necessary.

There is a marked difference in the amounts of the rates from both New Orleans and Sugarland to interior points in Nebraska, Kansas, and Oklahoma as compared with rates to the Missouri River cities and points taking the same rates, such as Fort Scott, Kans., or which are in close proximity to the river such as Lincoln, Nebr., to which point the rate is 3 cents higher than the rate to Omaha. The proposed rate to Omaha is 34 cents, yielding 6.4 mills per ton-mile for the short-line distance of 1,061 miles. The proposed rate of 43 cents to Beatrice, Nebr., yields 8.1 mills per ton-mile via the short-line distance of 1,060 miles. Numerous other comparisons may be made from the foregoing table showing present and proposed rates and ton-mile earnings thereunder from New Orleans, from which it will appear that the present rates to interior points, such as Hastings, Nebr.; Topeka, Salina, Coffeyville, and Wichita, Kans.; Clinton, Oklahoma City, and McAlester, Okla., for example, yield comparatively high ton-mile earnings. The comparison is accentuated when the car and car-mile earnings are used.

Respondents propose increased rates on domestic blackstrap to a limited number of points, the increases proposed being, as heretofore stated, uniformly 4 cents on both conditional and unconditional blackstrap except to St. Cloud, Minn., to which point the proposed increase is 3 cents on both conditional and unconditional, and except to Memphis, to which place it is proposed to increase the conditional 3 cents and the unconditional 5 cents.

It will be noted that the present domestic rates on blackstrap are 1 cent below the present import rates, whereas in *Louisiana Sugar Planters' Asso. v. I. C. R. R. Co.*, 31 I. C. C., 311, involving, among other things, the relationship of domestic and import rates on blackstrap the Commission found higher rates were justified on domestic than on imported blackstrap, but held that any greater difference than 3 cents between the import rates and the domestic rates from New Orleans to St. Louis, East St. Louis, and other points was unjustly discriminatory against the domestic product. The Com-

mission also held in that case that the unconditional rate should not exceed the conditional rate by more than 2 cents.

Large quantities of blackstrap are now consumed in the manufacture of alcohol for use in munition factories. The testimony shows that since the beginning of the European war the price of blackstrap has advanced from 5 to 8 cents per gallon to 18 and 19 cents per gallon, dependent upon the grade, from which we infer that the conditional rate is not now available to the shippers of this commodity. The following table shows the present and proposed unconditional rates on domestic blackstrap from New Orleans to all destination points affected by the proposed increases and the ton-mile earnings thereunder. The conditional rates are 2 cents lower.

Statement showing present and proposed rates on low-grade domestic blackstrap molasses in tank cars, values in excess of 8 cents per gallon, together with distances and ton-mile earnings.

From New Orleans to—	Miles.	Present rates.	Ton-mile earnings.	Proposed rates.	Ton-mile earnings.
		Cents.	Mills.	Cents.	Mills.
Atchison, Kans.....	914	22.0	4.8	26.0	5.7
Belleville, Kans.....	973	33.0	6.8	37.0	7.6
Concordia, Kans.....	997	33.0	6.6	37.0	7.4
Council Bluffs, Iowa.....	1,057	24.0	4.5	28.0	5.2
Fort Calhoun, Nebr.....	1,077	31.0	5.6	35.0	6.5
Fredonia, Kans.....	757	33.0	8.9	37.0	9.8
Independence, Kans.....	732	33.0	9.6	37.0	10.1
Kansas City, Mo.....	867	22.0	5.1	26.0	6.0
Leavenworth, Kans.....	893	22.0	4.9	26.0	5.8
Manhattan, Kans.....	913	33.0	7.2	37.0	8.1
Memphis, Tenn.....	455	10.0	-----	15.0	-----
Mound Ridge, Kans.....	884	33.0	7.5	37.0	8.4
Muskogee, Okla.....	626	30.0	9.6	34.0	10.9
Newton, Kans.....	870	33.0	7.6	37.0	8.5
Oklahoma City, Okla.....	712	33.0	9.3	37.0	10.4
Omaha, Nebr.....	1,061	24.0	4.5	28.0	5.2
Potwin, Kans.....	863	33.0	7.6	37.0	8.5
St. Cloud, Minn.....	1,432	39.5	5.5	42.5	5.9
St. Joseph, Mo.....	928	22.0	4.7	26.0	5.6
Salina, Kans.....	937	33.0	7.0	37.0	7.9
Shawnee, Okla.....	687	33.0	9.6	37.0	10.7
South Omaha, Nebr.....	1,061	24.0	4.5	28.0	5.3
Topeka, Kans.....	903	32.0	7.1	36.0	7.9
Tulsa, Okla.....	680	30.0	8.8	34.0	10.0
Wichita, Kans.....	842	33.0	7.8	37.0	8.7
St. Louis, Mo.....	701	20.0	5.7	20.0	5.7

Until within recent years blackstrap and molasses moved under a common rate. The causes leading up to the establishment of lower rates specifically applicable to blackstrap, the differentials based on declared value, and the adjustment of rates as between Mobile and New Orleans have been detailed in the reports in other cases in which rates on this commodity were involved. *Molasses Rates From Mobile, Ala.*, 28 I. C. C., 666; *Louisiana Sugar Planters' Asso. v. I. C. R. R. Co.*, *supra*; *Rates on Blackstrap Molasses*, 32 I. C. C., 176. The adjustment of rates on this commodity as between the different destination points, however, is for the first time brought in issue in this case.

In September, 1913, specific rates on blackstrap of 27 cents to Kansas City and 29 cents to Omaha were established from interior Louisiana producing points. These rates were 3 cents less than the molasses rates theretofore applicable on blackstrap. The rate to St. Louis being at that time 21 cents, the reduction to Kansas City and Omaha resulted in differentials over St. Louis of 6 and 8 cents, respectively. By tariffs filed to become effective in March, 1914, the carriers proposed to restore the blackstrap rates to the same basis as molasses, but the Commission suspended the schedules. *Rates on Blackstrap Molasses, supra*. While this proceeding was pending the Commission announced its decision in *Louisiana Sugar Planters' Asso. v. I. C. R. R. Co., supra*, involving, as already stated, the question of relationship between domestic and import rates and also the differentials, based upon the value or grade, in the rates on blackstrap. Effective August 28, 1914, a still lower basis of rates was established to Kansas City. In making the latter reductions the carriers observed the differentials prescribed by the Commission in the case last cited and they also fixed for the first time lower rates on imported blackstrap. Corresponding reductions, contemporaneously made, in the rates to St. Louis preserved the difference in rates theretofore obtaining between St. Louis and the Missouri River crossings, viz, Kansas City 6 cents and Omaha 8 cents higher than St. Louis.

November 3, 1914, the Commission announced its decision in the suspension proceeding *Rates on Blackstrap, supra*, holding that the proposed restoration of the blackstrap rates to Kansas City and Omaha to the molasses basis was justified, but the carriers were unable to restore the rates because of developments resulting in the further reductions just mentioned. January 2, 1915, the Kansas City Southern established a 17-cent conditional rate on import blackstrap from Port Arthur, Tex., to Kansas City and on February 1, 1915, a like rate of 19 cents to Omaha. It did not, however, establish any rates on domestic blackstrap and the record shows that there is no domestic production of blackstrap in the immediate vicinity of Port Arthur. The New Orleans lines met the action of the Kansas City Southern by further reducing the import rates from New Orleans, effective January 24, 1915. Evidently conceiving that the orders of the Commission in *Louisiana Sugar Planters' Asso. v. I. C. R. R. Co., supra*, so required, they at the same time reduced both the domestic conditional and unconditional rates. They did not in this instance, however, reduce the St. Louis rates and it resulted, therefore, that the differential theretofore existing between St. Louis and the Missouri River points was changed, being reduced to 2 cents at Kansas City and 4 cents at Omaha.

The chronological development of this adjustment as between St. Louis, on the one hand, and Missouri River cities, on the other, is

shown by the following table taken from one of the protestants' briefs in which, for comparative purposes, we include the import rates:

Chronological history of rates on low-grade blackstrap molasses in tank cars from New Orleans to Kansas City.

Effective prior to Oct.9,1913.	30. ¹				32. ¹				21. ¹			
	A	B	C	D	A	B	C	D	A	B	C	D
Oct. 9, 1913.....	27	27	27	27	29	29	29	29	.....	.....	.....	.....
Aug. 23, 1914.....	21	23	24	26	23	25	26	28	15	17	18	20
Nov. 15, 1914.....	17	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Jan. 24, 1915.....	17	19	20	22	19	21	22	24	.....	.....	.....	.....
Under suspension.....	² 21	² 23	24	26	² 23	² 25	26	28	.....	.....	.....	.....

¹ Molasses rate inclusive of imported and domestic blackstrap.
² Import rates not under suspension.

- A.—Imported blackstrap, agreed value 8 cents or less per gallon.
- B.—Imported blackstrap, agreed value over 8 cents per gallon.
- C.—Domestic blackstrap, agreed value 8 cents or less per gallon.
- D.—Domestic blackstrap, agreed value over 8 cents per gallon.

There was at the same time a reduction in rates on blackstrap from Mobile to Missouri River cities corresponding with that from New Orleans, as shown in the foregoing table, the reduction from both Mobile and New Orleans having been forced by the Kansas City Southern, which carrier by schedules effective January 1, 1916, increased its conditional import rates from Port Arthur to the former basis of 21 cents to Kansas City and 23 cents to Omaha. With the competitive pressure thus lessened the New Orleans and Mobile lines sought to make corresponding increases in their rates to the Missouri River cities and interior points in Kansas and Oklahoma, advancing the import and domestic rates 4 cents, thus observing the 3-cent differential between domestic and import. The suspension of the domestic rates gives rise to this proceeding. Since the relative adjustment between St. Louis and the Missouri River cities is in issue here, it will be instructive to compare representative rates as is done in the following table:

Present and proposed unconditional rates on domestic blackstrap from Mobile, Ala., and New Orleans, La., short-line workable mileage and ton-mile earnings.

	Miles.	Present domestic rates.	Ten-mile earnings.	Proposed domestic rates.	Ten-mile earnings.
From Mobile, Ala., to—		Cents.	Mills.	Cents.	Mills.
Memphis.....	334	10.0	6.2	15.0	7.8
St. Louis.....	657	20.0	6.1	20.0	6.1
Kansas City.....	940	22.0	4.68	26.0	5.53
Omaha.....	1,071	24.0	4.48	28.0	5.23
From New Orleans, La., to—					
Memphis.....	305	10.0	6.07	15.0	7.50
St. Louis.....	701	20.0	5.7	20.0	5.7
Kansas City.....	867	22.0	5.07	26.0	6.0
Omaha.....	1,061	24.0	4.52	28.0	5.2

The contentions of protestants with respect to the relative adjustment will be referred to later.

Blackstrap moves principally in tank cars, about 90 per cent of which must be returned empty. The average loading is about 90,000 pounds and its present value 18 or 19 cents per gallon. Molasses moves generally in barrels or other containers and the testimony is that the average loading is 22.3 tons or 44,600 pounds per car, its value ranging from about 27½ cents per gallon for the commodity in barrels to 43½ cents per gallon packed in cases. In the shipment of molasses box cars are principally used, for which the ratio of return loading is much higher than for tank cars. A comparison of the relative cost of transporting glucose in box and tank car service was made in a recent case in which it was held that a rate of 80 cents for the transportation in tank cars from Keokuk, Iowa, to Portland, Oreg., and other north Pacific coast points was just and reasonable, there being contemporaneously in effect a 75-cent rate applicable to shipments in barrels in box cars. *Hubinger Bros. Co. v. A., T. & S. F. Ry. Co.*, 39 I. C. C., 672.

In *Rates on Blackstrap Molasses, supra*, the protestants admitted that the special rates on blackstrap were "fair and just," but contended that any increase of them would be unjust and detrimental to the blackstrap industry. In *Glucose from Chicago*, 36 I. C. C., 379, the Commission found justified a rate of 25 cents per 100 pounds on glucose in barrels and tank cars from Chicago to New York for export. This rate yields ton-mile earnings of 5.4 mills for a haul of 912 miles. The ton-mile earnings under the proposed rates on blackstrap, unconditional, from New Orleans to Kansas City and Omaha is 6 and 5.2 mills for hauls of 867 and 1,061 miles, respectively.

Respondents contend that the present rates are highly competitive, and that they are lower than they would be were it not for the low import rate of 15 cents from Mobile to St. Louis, which is not proposed to be increased and which is therefore not before us in this proceeding. They contend that while, temporarily, the rates to Kansas City have been 2 cents and to Omaha 4 cents over the rates to St. Louis, the proper differential is that which was previously in existence and which they now propose to reestablish, namely, 6 cents to Kansas City and 8 cents to Omaha. In support of this contention they have submitted statements showing the rates to Kansas City and Omaha on different commodities in which, with one exception, the differential to Kansas City is materially in excess of the differential which would result in the rates on blackstrap if the proposed rates were permitted to become effective.

Commodity.	From—	Rate to St. Louis.	Rate to Kansas City.	Rate to Omaha.	Rate in excess of rate to St. Louis.	
					To Kan- sas City.	To Omaha.
Molasses.....	New Orleans..	21	30	32	9	11
Denatured alcohol.....	do.....	23	33	36	10	13
Bags.....	do.....	16	28	31	12	15
Canned goods.....	do.....	27	38	41	11	14
Coffee.....	do.....	23	35	35	12	12
Rosin.....	do.....	17	27	30	10	13

Protestants' objection to the proposed increased rates are predicated largely upon the exigencies of commercial and competitive conditions. Their witnesses testified, for instance, that the prices obtainable for stock foods make the use of blackstrap, in the manufacture of these foods at the present enhanced price for blackstrap, almost prohibitive. They argue that blackstrap should have a special rate to the points at which it is used in the manufacture of stock foods because, as an ingredient of such foods, it moves out again at the ratio of about seven cars of feed out for each car of blackstrap in. Protestants direct attention to what they consider an anomalous situation in that alfalfa feed, containing from 20 to 50 per cent blackstrap, moves to the south at a lower rate than applies on blackstrap northbound. Respondents reply, however, that the rates on the manufactured feed are made in competition with rates on hay and other kinds of feed and are below the normal basis. Protestants earnestly contend that the adjustment of rates on domestic blackstrap between St. Louis and the Missouri River cities, which would obtain if the proposed rates became effective, would be unduly discriminatory against the Missouri River cities in favor of St. Louis. Protestants seek to retain the differentials which have been in effect since the reduction to the present basis was forced by the action of the Kansas City Southern Railway in establishing the import rates from Port Arthur. The Omaha protestants contend that in any event the rate on blackstrap from New Orleans to Omaha should not be more than 2½ cents higher than to St. Louis because the rates to St. Louis on refuse sirup from western beet-sugar refineries is only 2½ cents over Omaha. However, in *Kornfalfa Feed Milling Co. v. A., T. & S. F. Ry. Co.*, 38 I. C. C. 307, it was found that St. Louis was not dependent upon refuse sirup for the manufacture of feed and that very little moves to that point.

Moreover, the evidence in this case fails to show that the difference in rates on beet-sugar refuse may properly be considered as a just measure of the difference in rates on blackstrap molasses moving in a different direction over the lines of different carriers and obviously under dissimilar circumstances and conditions. Protestants

admit that under any adjustment of rates to Omaha the manufacturers of feeds at that point must continue to be at a disadvantage as compared with St. Louis competitors in so far as the use of blackstrap is concerned.

Upon consideration of all the facts of record, it is the finding and conclusion of the Commission that respondents have justified the proposed rates on molasses and blackstrap from the points of origin involved to all the points of destination affected, except those destination points west of the west bank of the Missouri River and west of the line of the Kansas City Southern Railway, but not including Lincoln, Nebr., and Fort Scott, Kans., to which last-named points the proposed rates are found to have also been justified and may be established.

40 I. C. C.

No. 7128.
RICHMOND COMMERCIAL CLUB
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

FOURTH SECTION APPLICATION No. 1952.

Submitted April 15, 1915. Decided June 29, 1916.

1. The rates in effect on the date of hearing from Cincinnati, Ohio, and Louisville, Ky., to Richmond, Ky., applicable on through interstate traffic from points in the north and west, not shown to have been unreasonable or unduly prejudicial to Richmond.
2. Application for relief from the requirements of the fourth section in connection with rates from eastern points to Winchester, Ky., and intermediate points on the Louisville & Nashville Railroad, denied.

J. V. Norman and J. J. Greenleaf for complainant.
N. W. Proctor for defendants.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

The complainant, a voluntary unincorporated association of business men, alleges that the rates charged by defendant, Louisville & Nashville Railroad Company, for the transportation from Louisville, Ky., and Cincinnati, Ohio, to Richmond, Ky., of traffic from points in the north and west are excessive and unreasonable and cause the through interstate rates, of which they form a part, to be correspondingly excessive and unreasonable, as well as unduly prejudicial to Richmond and unduly preferential of Winchester, Frankfort, Paris, Midway, and other Kentucky points; also that the rates to Richmond from New York, N. Y., and other eastern seaboard points and from the Virginia cities are unreasonable, unduly discriminatory, and in violation of the requirements of the long-and-short-haul provision of the fourth section of the act to regulate commerce, as amended.

The adjustments from the Ohio River and from the east will be considered separately. The points hereinafter referred to are in Kentucky, unless otherwise stated. Rates are stated in cents per 100 pounds.

To central Kentucky points the rates from Cincinnati and Louisville are generally the same, and through rates from the north, west,

admit that under any adjustment of rates to Omaha the manufacturers of feeds at that point must continue to be at a disadvantage as compared with St. Louis competitors in so far as the use of blackstrap is concerned.

Upon consideration of all the facts of record, it is the finding and conclusion of the Commission that respondents have justified the proposed rates on molasses and blackstrap from the points of origin involved to all the points of destination affected, except those destination points west of the west bank of the Missouri River and west of the line of the Kansas City Southern Railway, but not including Lincoln, Nebr., and Fort Scott, Kans. to which last-named point may be

RICHMOND COMMISSION

LOUISVILLE & NASHVILLE

FOURTH

Information

1. The rates in effect on the Louisville & Nashville Railroad Company, from and to the following points, as of the 1st day of January, 1900, are as follows:
From Louisville to Nashville, 100 miles, 1.00
From Nashville to Louisville, 100 miles, 1.00
From Louisville to Knoxville, 200 miles, 2.00
From Knoxville to Louisville, 200 miles, 2.00
2. Applicable to the following points, as of the 1st day of January, 1900, are as follows:
From Louisville to Knoxville, 200 miles, 2.00
From Knoxville to Louisville, 200 miles, 2.00
From Louisville to Memphis, 300 miles, 3.00
From Memphis to Louisville, 300 miles, 3.00

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and east, except Atlantic seaboard territory, are made lowest combination on either of these Ohio River crossings. The adjustment to central Kentucky from the Ohio River was described in *Lebanon Commercial Club v. L. & N. R. R. Co.*, 25 I. C. C., 277, and 35 I. C. C., 204, and we reprint here the map prepared for that case, which shows



both the present and the former names of lines in that region acquired by the Louisville & Nashville and other carriers.

Prior to the extension of the Kentucky Central Railroad from Paris, the only line serving Richmond was the Louisville & Nashville from Louisville through Junction City; and rates from Louis-

ville to Richmond were made with reference to the rates of the Kentucky Central from Cincinnati to Nicholasville, a point 9 miles across country from Richmond. At that time the Kentucky Central extended from Cincinnati through Paris and Lexington to Nicholasville, and its rates from Cincinnati to Lexington were made the same as the rates of the Louisville, Cincinnati & Lexington Railway from Louisville. The construction by the city of Cincinnati of the Cincinnati Southern Railroad, now a part of the Cincinnati, New Orleans & Texas Pacific Railway, from Cincinnati to Lexington some time prior to 1877 shortened the distance between those points about 20 per cent and resulted in a reduction of rates of about the same percentage. This reduction to Lexington was met by the lines both from Cincinnati and Louisville, and the Kentucky Central reduced the rates to its intermediate stations to approximate the rates to opposite stations on the new paralleling line. Subsequently, by purchase of the line of the Kentucky Central from Lexington to Nicholasville and by construction beyond, the Cincinnati Southern extended south, its line crossing the Knoxville division of the Louisville & Nashville at Junction City. The Kentucky Central also constructed south from Paris through Winchester and Richmond to Sinks, where it made connection with the same division of the Louisville & Nashville. It established from Cincinnati the same rates to Winchester as were in effect to Lexington, and rates to Richmond and other points south were graded up. Later the Southern Railway built a line from Louisville to Lexington, with branches to Georgetown, Burgin, and Danville, and established from Louisville to the latter three points the rates then in effect from Cincinnati. Winchester is now served also by the Chesapeake & Ohio, which line operates its trains to Louisville over the tracks of the Louisville & Nashville from Lexington. The Louisville & Nashville acquired the Louisville, Cincinnati & Lexington and Kentucky Central lines in 1881 and 1891, respectively, and in 1908 acquired the line running from Frankfort southeast through Versailles and Nicholasville to Richmond and beyond, the construction of which subsequent to that of any of the lines above named seems not to have caused any reductions to Richmond.

Richmond is 119 miles from Cincinnati and 121 miles from Louisville via the Louisville & Nashville. Winchester is 23 miles less distant from the former and 7 miles less distant from the latter crossing via the lines of the same carrier, and takes somewhat lower rates than Richmond.

On January 1, 1916, in readjusting rates from the Ohio River crossings to points in southeastern Mississippi Valley territories to remove departures from the long-and-short-haul rule found by the Commission in *Fourth Section Violations in the Southeast*, 30 I. C. C.

153, and 32 I. C. C., 61, not to have been justified, the carriers made certain increases to the points in Kentucky here involved. The former and the present rates on the numbered classes from Cincinnati and Louisville to Richmond and Winchester are as follows:

To—	Effective prior to January 1, 1916.						Effective on January 1, 1916.					
	1	2	3	4	5	6	1	2	3	4	5	6
Richmond.....	38	33	28	23	21	18	45	40	34	30	26	23
Winchester.....	28	25	21	15	14	13	35	31	26	21	18	16
Difference.....	10	8	7	8	7	5	10	9	8	9	8	6

The differences shown are not the local rates of the Louisville & Nashville between Winchester and Richmond, which were on the date of hearing and still are as follows:

Class	1	2	3	4	5	6
Rate.....	17	14	13	11	9	8

Nicholasville is 94 and Danville 117 miles from Cincinnati via the Cincinnati Southern. From Louisville the former is 98 miles via the Louisville & Nashville and the latter 93 miles via the Southern Railway. The class rates from Cincinnati and Louisville to Nicholasville were, prior to January 1, 1916, lower than corresponding rates to Richmond by the following amounts:

Class	1	2	3	4	5	6
Difference.....	10	6	4	4	4	3

Except on first class the increases effective on January 1 last to the two points named were in the same amounts. The increases in the first-class rates were 12 cents to Nicholasville and 7 cents to Richmond. Consequently the only change in the differences above stated is in first class, which is now 5 cents. Prior to the readjustment referred to rates to Richmond were 1 cent higher on first class, 1 cent lower on fourth class, and 2 cents lower on sixth class than to Danville, rates on the other numbered classes being equal. The present rates are lower to Richmond than to Danville by 2 cents on first and 1 cent on second and third classes, the rates on the other numbered classes being the same.

It was testified by witnesses for the defendants that the construction of the Cincinnati Southern resulted in "a low gulley of rates" extending through central Kentucky from north to south; and an examination of the former rates from the Ohio River to central Kentucky shows that the amount of the rates was fixed with reference more to distance from Cincinnati than from Louisville. The rates from Cincinnati to Richmond and points intermediate, in fact, increased with distance, although not in a regularly ascending scale,

whereas from Louisville to a particular point rates were fixed not primarily with reference to mileage but to rates from Cincinnati to that point or to a point in close proximity. The complainant's testimony and briefs indicate that Richmond was at a so-called pinnacle of rates, whereas the defendants' testimony shows that it was near the base of an ascending scale and the communities which are alleged to be unduly preferred are all located north and west of Richmond and therefore in closer proximity to Cincinnati and Louisville.

Although several Kentucky points have been named as being unduly preferred, it appears that the competition which complainant feels most keenly is with Winchester, and the testimony was largely directed to the comparative rates and transportation conditions to the two points. The complainant also alleges that the rates to Richmond are unreasonable and excessive, but the real complaint appears to be of discrimination.

Upon this record we can express an opinion only upon the rates in effect on the date of the hearing. It appears from the testimony that the adjustment to central Kentucky points was established prior to the acquisition by the Louisville & Nashville of the Kentucky Central and that the competitive conditions at Richmond were and are substantially different from those which caused the establishment of lower scales of rates to the points alleged to be unduly preferred. Upon consideration of all of the facts of record we are of opinion, and find, that the rates in effect on the date of hearing to Richmond and to the points alleged to be unduly preferred from Cincinnati and Louisville, applicable on through traffic from the north and west, are not shown to have subjected Richmond and its shippers to undue prejudice and disadvantage, or Winchester and the other Kentucky points taking lower rates to undue preference and advantage, and further that said rates to Richmond are not shown to have been unreasonable *per se*. The increases effective January 1 last, it will be noted, maintain substantially the former relationship of rates to Richmond and to the points alleged to be unduly preferred with the exception that the difference between the rates to Richmond and to Winchester is greater by 1 cent on all but one of the numbered classes.

In its brief defendant, Louisville & Nashville, in describing the routes from the east to Richmond, states that—

Traffic from the east destined to Richmond can move via all-rail routes composed of the various northern trunk lines to Cincinnati in connection with the L. & N. from Cincinnati or via the Chesapeake & Ohio Railway and its various eastern connections to Winchester and thence L. & N. (the Chesapeake & Ohio Railway having both all-rail routes via Alexandria and ocean-and-rail routes via Newport News), or such traffic can move via the Norfolk & Western Railway and its eastern connections to Norton, Va., and thence over the Cumberland Valley division and the Kentucky division of the Louisville & Nash-

ville Railroad from Norton to Richmond. The Norfolk & Western Railway also has both all-rail routes through Hagerstown, Md., and other junctions, and a rail-and-water route via Norfolk.

New York may be taken as the representative point of origin in the east, as rates from other Atlantic coast ports and interior eastern points are made with relation to the New York rates, either differentially or on a percentage basis. On traffic from New York the statement quoted can not be verified, as the tariffs provide for the application of the all-rail rates to Richmond only through the Ohio River crossings or Winchester and not through Hagerstown and Norton.

From New York to Louisville and Cincinnati the rates of the ocean-and-rail routes are the following differentials lower than those of the all-rail routes:

Class.....	1	2	3	4	5	6
Differential.....	10	8	6	4	4	3

As Winchester is intermediate to Louisville via the route of the Chesapeake & Ohio and as that carrier observes the requirement of the long-and-short-haul rule, the Louisville rates, both all-rail and ocean-and-rail, are published to Winchester. The present ocean-and-rail rates from New York to Winchester and those applicable prior to the increase found justified by the Commission in *The Five Per Cent Case*, 31 I. C. C., 351, and 32 I. C. C., 325, are as follows:

	1	2	3	4	5	6
Present rate.....	68.8	60.3	46.5	32.8	27.5	23.3
Former rate.....	65	57	44	31	26	22

The Louisville & Nashville meets the all-rail and ocean-and-rail rates to Winchester established by the Chesapeake & Ohio. The ocean-and-rail rates are applicable via the Cumberland Gap Despatch, which is composed of the Old Dominion Steamship Company from New York to Norfolk, the Norfolk & Western to Norton, and the Louisville & Nashville beyond. To Richmond through rates are published, based on full Winchester combination, but while the Winchester rates are governed by the official classification the rates to Richmond and points south thereof are governed by the southern classification. Effective January 1 last there was a substantial readjustment in both the all-rail and ocean-and-rail rates from the east to Louisville & Nashville points south of Winchester. The present and the former rates from New York to Richmond via the Cumberland Gap Despatch are as follows:

	1	2	3	4	5	6
Present rate.....	86	74	59.5	44	36.5	31
Former rate.....	82	71	57	42	35	30

Prior to the readjustment referred to, the basis upon which ocean-and-rail rates from New York to Louisville & Nashville points between Norton and Winchester were made was lowest combination, generally on either of the two points named. The maximum rates were carried to Ewing and Rose Hill, Va., 131 and 135 miles, respectively, south of Richmond. The all-rail rates from New York to points on this line were higher than the ocean-and-rail rates by varying amounts, generally the scale in effect to Richmond or less. In the readjustment the maximum rates, both all rail and ocean and rail, were reduced, and it would appear that a number of points formerly taking full combination on Norton or Winchester now take less. The former and the present ocean-and-rail rates from New York to Ewing and Rose Hill are as follows:

	1	2	3	4	5	6
Former rate.....	130.5	111	90.5	68	62	51
Present rate.....	119	102	89	70	62	51

The all-rail rates to the points named were formerly higher than the ocean-and-rail rates by substantially the scale in effect to Richmond, but with the exception of fourth class, which is 4 cents higher, the present all-rail rates are the same as the ocean-and-rail rates. In the readjustment the differentials between routes to points on the southern portion of this line were either reduced or eliminated altogether.

The general application of the Louisville & Nashville covering departures from the requirements of the long-and-short-haul rule in rates to and from points on its line was assigned for hearing with the complaint in this case, in so far as it related to rates from the east to the points involved. The defendants attempted to justify only the departures via the ocean-and-rail routes through Norton to the extent that rates to intermediate points were higher than to Winchester.

To Winchester the distance from Newport News via the Chesapeake & Ohio is 616 miles and from Norfolk via the Norfolk & Western and the Louisville & Nashville 676 miles, or less than 10 per cent longer. The shortest all-rail route to Winchester from New York is via the Pennsylvania Railroad to Alexandria, Va., and the Chesapeake & Ohio beyond, 787 miles, the route composed of lines of the Pennsylvania system to Cincinnati and the Louisville & Nashville beyond being 846, or 7½ per cent longer. The distance through Hagerstown and Norton, via which, as stated, no through rates are published, is 925 miles, or 19 per cent longer than the short line.

The defendants' testimony in support of the fourth section application was meager. The contention of the defendants was that the

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Winchester rates were compelled, and that the intermediate rates were reasonable. Comparisons were submitted of the ocean-and-rail rates to Rose Hill and Ewing with a table of average rates between competitive and noncompetitive points in the southeast, appearing on page 174 of the Commission's original report in *Fourth Section Violations in the Southeast, supra*. The complainant's allegation as to the unreasonableness *per se* of the rates from the east to Richmond was not supported by substantial testimony.

Upon full consideration we are of opinion, and find, that the facts appearing of record do not warrant the granting of relief from the requirements of the long-and-short-haul provision of the fourth section in connection with rates from the east to Louisville & Nashville stations intermediate to Winchester, applicable via the Cumberland Gap Despatch route, or a finding that the rates from the east to Richmond were unreasonable.

The complaint will be dismissed. The fourth section application will be denied in so far as it relates to the rates above described.

40 I. C. C

No. 6287.
POTEAU COAL AND MERCANTILE COMPANY
v.
ABILENE & SOUTHERN RAILWAY COMPANY ET AL.

Submitted September 30, 1915. Decided July 7, 1916.

The complainant asked for the reinstatement of joint rates on coal from Witteville, Okla., to points in Texas and other states which had been canceled by the defendants, and for reparation. The defendants voluntarily restored the joint rates, but opposed the claims for reparation. At the hearing certain carriers asked the Commission to determine whether the Fort Smith, Poteau & Western Railway Company, which serves complainant's mine at Witteville, is a common carrier, and, if so, to fix divisions of the reinstated joint rates. Upon all the evidence,
Held:

1. The rates under attack were unreasonable in the amount that they exceeded the joint through rates formerly in effect and reparation awarded accordingly.
2. The Fort Smith, Poteau & Western Railway Company is a common carrier. The question of divisions left for further consideration.

John E. Parrott for complainant.

Beardsley, Shaich & Beardsley for Fort Smith, Poteau & Western Railway Company.

Thomas Bond and *A. H. Morse* for St. Louis & San Francisco Railroad Company and its receivers.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

The complaint in this proceeding was filed October 27, 1913, by a corporation then operating under lease a coal mine at Witteville, Okla. Witteville is served by the Fort Smith, Poteau & Western Railway Company, hereinafter referred to as the Fort Smith, a line extending approximately 3½ miles from that point to Poteau, Okla., where a direct connection is made with the St. Louis & San Francisco Railroad Company, hereinafter called the Frisco. Under certain trackage agreements the Fort Smith also makes connection with the Kansas City Southern Railway at Poteau.

Prior to July 21, 1913, the Frisco published joint through rates, in connection with the Fort Smith, from Witteville to destinations in Arkansas, Missouri, Kansas, and other states, allowing the Fort Smith a division of 10 cents per ton for its haul from Witteville to Poteau. On that date the Frisco canceled its joint rates from Witte-

ville. Similarly joint rates from Witteville to points in Texas were canceled September 7, 1913. These joint rates also applied from Poteau and other points in the same group. The rate of the Fort Smith from Witteville to Poteau was 30 cents. The effect of these cancellations, therefore, was to increase the rate paid by complainant 30 cents per ton.

The complaint alleges in substance that the rates made on combination resulting from the cancellation of the joint rates are unreasonable and subject the complainant to an undue and unreasonable prejudice and disadvantage as compared with its competitors located in the same general territory. The establishment of reasonable rates is asked, together with an award of reparation.

The joint rates to Texas were reinstated February 9, 1915, and to points in Arkansas and other states July 28, 1915, by voluntary action of the carriers.

The increases in rates resulting from the cancellation of the joint rates were made subsequent to January 1, 1910, and accordingly the burden is on the carriers to justify the reasonableness of the increased rates. The joint rates formerly in effect and which were reinstated from Witteville were the same as the then effective rates from Cameron, Caston, Cavanal, Poteau, and Wister, Okla.; Huntington, Jenson, Mansfield, and Montreal, Ark. Defendants have not justified the increased rates resulting from the cancellation of the joint rates.

The claims for reparation here presented are of three kinds:

1. Certain alleged overcharges due to errors in interline settlements on shipments of coal sold to the Texas Midland Railroad while the joint rates were in effect.

It appears that coal was billed and shipped to the Texas Midland Railroad at Culberson, Tex. The then effective rate from all points in the group was \$1.60, of which the usual divisions were 80 cents to the Frisco and 80 cents to the Texas Midland. On the shipments in question the Frisco allowed the Fort Smith 10 cents per ton, but in making the interline settlements with the Texas Midland the Frisco received its full division of 80 cents, leaving but 70 cents to the Texas Midland. The Texas Midland then deducted 10 cents per ton from the invoice in the settlement of its account with the complainant. The Frisco apparently does not question the propriety of this claim. Assuming, however, the accuracy of the statements upon which it is founded, it would appear that complainant's controversy is with the Texas Midland for a balance due on the contract price of the coal and does not constitute such a claim as may be recovered by way of reparation. Furthermore, the complaint contains no allegation upon which a claim of this character can be predicated.

2. Charges paid while joint rates were in effect based on combination of local rates on Poteau which were assessed because the Fort Smith refused to accept shipments on the joint rates owing to a dispute with the Frisco over the division of such rates.

On some shipments the Fort Smith accepted a division of 10 cents per ton. After negotiations a request for a larger division was refused by the Frisco, and the Fort Smith in turn refused to transport shipments on the effective joint rates. Complainant accordingly billed the coal to Poteau, paying the Fort Smith its local rate of 30 cents per ton, and there rebilled to destination, paying for the haul from Poteau the group rate which was also applicable from Witteville, the point of origin. This resulted in an unlawful overcharge, for which refund with interest should be made promptly.

3. Charges based on combination of intermediate rates during the periods when the joint rates were not in effect.

As to this claim, we find that the rates charged on the shipments made by complainant for the transportation of coal from Witteville to interstate destinations were unreasonable to the extent that they exceeded the joint rates contemporaneously applied from mines in the group to which Witteville has been restored. We find that the complainant made the shipments in accordance with the foregoing statement of facts, and paid and bore the charges thereon at the rates herein found to have been unreasonable, and that it has been damaged to the extent of the difference between the amount that it paid and the amount that it would have paid at the rates herein found reasonable.

At the time of the hearing the joint rates had not been fully restored and the record before us does not disclose all the information necessary to fix the amount of reparation due hereunder. Complainant should prepare a statement showing as to each shipment on which reparation is claimed the date of shipment, points of origin and destination, route, weight, car number and initials, rate applied, charges paid, date of payment, and the amount of reparation due under our findings herein, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared by complainant and verified by the defendants, an order fixing the amount of reparation will be entered.

At the hearing the Frisco and the Fort Smith, without objection, submitted evidence on two issues not made by the pleadings which the Commission is asked to determine: (1) Whether the Fort Smith is a common carrier; (2) if so, what divisions should be allowed the Fort Smith out of the joint rates.

The Frisco contends that the Fort Smith is a plant facility of the complainant and explains its cancellation of the joint rates as being

a compliance with the holding of the Commission in *The Tap Line Case*, 23 I. C. C., 277, 549. The reinstatement of those rates after the decision of the Supreme Court in *The Tap Line Cases*, 234 U. S., 1, it is urged, was not in recognition of the Fort Smith as a common carrier, but because of the competition of the Kansas City Southern, which had published joint rates.

The Fort Smith, Poteau & Western Railway Company is a corporation organized in 1899 under the laws of West Virginia, with the usual powers of a common carrier of passengers and freight. The line is of standard gauge and runs through a winding canyon in the Ozark Mountains, with heavy grades, to an elevation of 400 feet above Poteau. Its equipment consists of one 40-ton locomotive, one combination passenger and express car, and one freight car. Coal is shipped from the mines in cars secured from the Frisco and the Kansas City Southern under the usual per diem rental. The reproduction cost of the road was estimated to be \$60,000, and it was stated that a considerably larger amount had been spent upon the property.

The operation of this line has been coincident with the operation of the mine which it was built to serve, and no trains have been run when the mine was not being worked. From July, 1912, to the time of the hearing of this case the railroad was operated regularly, running two trains per day in each direction with a passenger coach attached. In 1914 its revenue was derived approximately from the following sources: Coal, 75 per cent; miscellaneous freight, 15 per cent; passengers and mail, 10 per cent. The revenue from traffic other than coal accrued chiefly from the transportation of merchandise for the general store at Witteville, which supplies the needs of a mining community of some 300 people, and from the transportation of miners and their families to and from Witteville. In addition to this, however, the Fort Smith performs switching services for a brick plant located on its tracks at Poteau. It holds itself out to be a common carrier, offers its services to the public, files tariffs, conforms to the laws of the state of Oklahoma relating to the operation and maintenance of a common carrier, pays a state tax as such, makes annual reports to the state commission, to this Commission, and is treated as a common carrier by the state of Oklahoma and by the corporation commission of that state. By its charter it is empowered to extend its lines, and testimony was offered that an extension is in contemplation. The evidence as to a possible extension is very vague, however, and it seems doubtful if any extension would be warranted by the physical conditions and traffic possibilities of the locality which it serves.

When organized the stock of this railroad company was owned by the same interests as owned the complainant mining company and in

like proportions. Subsequent to the filing of the complaint herein, and prior to the hearing, complainant was adjudicated a bankrupt and its assets were sold by the receiver in bankruptcy to one Jacob E. Huff. Huff, although not made a party to this proceeding, appeared as a witness at the hearing and testified that the purchase of the complainant's assets was made for his own account and not in the interests of the stockholders of complainant's property, although there is a suggestion in the record that the latter will make an effort to reacquire the property. It further appears that Huff is in no wise interested in the railroad company. The ownership of the railroad company, therefore, at the time of the hearing was distinct from the ownership of the complainant mining company. The Frisco cites certain cases on which it relies as showing that the Fort Smith is not a common carrier, but these cases were decided by the Commission before the decision of the Supreme Court in *The Tap Line Cases, supra*.

Under the facts here presented the Commission is of opinion and finds that the railroad in question has been shown to be a common carrier and that it is therefore entitled to receive divisions out of the joint rates established.

With regard to the fixing of divisions, the Fort Smith and the Frisco offered to waive a finding by the Commission that the joint rates, as restored, are reasonable, and the making of an order prescribing those rates for the future. The divisions asked by the Fort Smith on coal destined to points on the Frisco are a mileage prorate with a minimum of 20 per cent of the joint rates, except that to Fort Smith, Ark., 32 miles from Witteville, an arbitrary division of 15 cents per ton of 2,000 pounds, and to points east of Springfield, Mo., which is 210 miles from Witteville, an arbitrary division of 25 cents per ton are asked. On coal destined to points beyond the Frisco, the division claimed as reasonable is a mileage prorate with a minimum 20 per cent of the joint revenue accruing to the Fort Smith and the Frisco. Based on its tonnage of coal carried in 1914 the divisions thus asked would have given the Fort Smith approximately 27 cents per ton. Evidence was offered intended to show that the cost of operation on coal traffic to the Fort Smith is approximately 55 cents per ton. The Frisco urges that the divisions to the Fort Smith, if fixed, should be limited to 10 cents per ton. The divisions now in effect with the Kansas City Southern yield from 10 to 25 cents per ton to the Fort Smith. In order to reach the rails of the Kansas City Southern at Poteau, a switching service for a distance of about one-quarter of a mile is rendered by the Frisco, for which the Fort Smith pays a charge of \$2 per car. The average net weight of cars loaded at Witteville is 41.6 tons.

In 1914, 23,209 tons of coal were shipped over the Fort Smith, of which 11,934 tons moved to interstate points and the remainder to intrastate points. Of the interstate tonnage, 5,649 tons moved to northern Texas, of which 2,630 tons moved via the Frisco and the remainder via the Kansas City Southern, 2,755 tons moved to Arkansas and Louisiana, and 3,530 tons moved to points chiefly in Kansas and Missouri.

The allowance of 10 cents per ton by the Frisco to the Fort Smith seems to have been made originally in order to encourage the operation of the mine at Witteville, which at times had been unsuccessful, rather than as a fair proportion of joint rates to a common carrier originating the traffic and operating under adverse conditions. On the other hand, a division to the Fort Smith sufficient to meet its cost of operation as a common carrier independent of association with the mine would require a substantial reduction in the revenues of the line-haul carrier and would thus suggest a higher rate from Witteville than is applicable from the junction point as necessary to cover adequate transportation charges for the through service. Since the hearing the joint rates from Witteville and other points in the group have been increased 10 cents per ton, and the increased rates were found justified in *1915 Western Rate Advance Case*, 35 I. C. C., 497. There is, of course, no evidence before us that the carriers have failed to agree upon divisions of the rates as thus increased. The pleadings gave no notice that the issue of divisions would be raised in this case, and only the Fort Smith and the Frisco were heard on that subject. Other carriers participate in the transportation and are interested in the apportionment of the rates. Under these circumstances, and in the light of our findings herein, we think the carriers should renew their efforts to agree upon divisions.

An order will be entered prescribing the current joint rates as reasonable maximum rates for the future. If the participating carriers can not agree upon the divisions of these rates, they may bring that issue before us by the usual supplemental proceeding.

40 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 746.

MANURE FROM JERSEY CITY, N. J.

Submitted March 23, 1916. Decided July 7, 1916.

Proposed increased rates on manure in carloads from New York City and contiguous territory to points on the Central New England Railway and the New York, New Haven & Hartford Railroad found not justified.

L. H. Kentfield for Central New England Railway and New York, New Haven & Hartford Railroad Company.

M. B. Pierce for Erie Railroad Company.

George L. Record and *J. Edward Murphy* for various protestants.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

By tariffs filed to become effective November 25, 1915, and December 10, 1915, respectively, the Erie Railroad Company, hereinafter termed the Erie, and the New York, New Haven & Hartford Railroad Company, hereinafter termed the New Haven, propose to increase the rates on stable manure in carloads from New York City and contiguous territory to stations on the Central New England Railway and the New Haven. Upon protest of various shippers, the Commission suspended the operation of the tariffs until March 24, 1916, and later until September 24, 1916.

The great bulk of the traffic here involved moves to a group of stations on the New Haven and the Central New England in the tobacco-growing district north and northeast of Hartford, Conn. Shipments from New York to those points via the New Haven are loaded either at its freight terminal at Harlem River or at harbor points from which the loaded cars are transported on car floats to the Harlem River terminal, where, by the use of a float bridge, they are switched to the tracks of the New Haven. Other shipments from New York to the same destinations move via the New York Central to Beacon, N. Y., thence via the Central New England and the New Haven. Shipments from Jersey City and neighboring points, referred to collectively hereinafter as the Jersey shore, move principally via the Erie to Campbell Hall, N. Y., thence via the Central New England and the New Haven, crossing the Hudson River at Poughkeepsie. A relatively small amount moves from the Jersey shore via the New Jersey Central. The total tonnage of manure moving from New York and vicinity over each of these roads to points on the

New Haven and Central New England during the year 1914, as shown by respondents' exhibit, was as follows:

	Tons.
New York, New Haven & Hartford.....	66, 525
Erie.....	5, 670
New York Central.....	13, 648
Central of New Jersey.....	536

Practically all of the New Haven shipments went to the territory near Hartford, but a considerable proportion of the New York Central and Erie shipments went to points on the Central New England in southeastern New York.

Under the present adjustment, the rates of the New Haven from points on the Manhattan, Brooklyn, and Jersey shores, which we shall hereinafter refer to collectively as harbor points, are the same as from Harlem River. No change is proposed in the rates from Harlem River, but it is proposed to add 40 cents to the Harlem River rates in making rates from harbor points. The rate unit in all cases is the ton of 2,000 pounds. The rate from Harlem River to the principal consuming points is \$1.30 and the proposed through rate from harbor points is therefore \$1.70. The following statement shows the principal destinations, routes, distances, and rates involved in this proceeding:

Comparative statement of rates per ton of 2,000 pounds on stable manure in carloads from New York City and vicinity to principal consuming points.

To—	New York, New Haven & Hartford.				Erie.			New York Central.	
	From Harlem River.		From New York harbor points.		From Jersey shore. ¹			From 33d St., 60th St., 130th St., Yonkers, etc.	
	Dis- tance	Rate. ²	Dis- tance.	Pro- posed rate. ²	Dis- tance.	Rate. ²		Distance from 130th St.	Rate. ²
						Eftec- tive.	Pro- posed.		
	Miles.		Miles.		Miles.			Miles.	
Simsbury, Conn.....	110	\$1.20	.....	\$1.60	188	\$1.26	\$1.70	166	\$1.30
Tariffville, Conn.....	114	1.30	.....	1.70	192	1.26	1.70	168	1.30
East Granby, Conn.....	117	1.30	.....	1.70	194	1.26	1.70	172	1.30
West Suffield, Conn.....	121	1.30	.....	1.70	199	1.26	1.70	176	1.30
Windsor, Conn.....	111	1.30	.....	1.70	209	1.58	1.70	170	1.50
Windsor Locks, Conn.....	117	1.30	.....	1.70	215	1.62	1.70	176	1.55
Warehouse Point, Conn.....	118	1.30	.....	1.70	216	1.78	1.70	177	1.55
Thompsonville, Conn.....	122	1.30	.....	1.70	220	1.78	1.70	181	1.70
East Hartford, Conn.....	108	1.20	.....	1.60	206	1.58	1.70	167	1.50
Burnside, Conn.....	109	1.20	.....	1.60	207	1.58	1.70	168	1.50
Buckland, Conn.....	113	1.30	.....	1.70	211	1.58	1.70	173	1.50
Manchester, Conn.....	114	1.30	.....	1.70	212	1.58	1.70	.....	.....
Vernon, Conn.....	117	1.30	.....	1.70	215	1.62	1.70	176	1.55
South Windsor, Conn.....	112	1.30	.....	1.70	210	1.58	1.70	171	1.50
East Windsor Hill, Conn....	114	1.30	.....	1.70	212	1.58	1.70	173	1.50
East Windsor, Conn.....	118	1.30	.....	1.70	216	1.62	1.70	177	1.55
Broad Brook, Conn.....	120	1.30	.....	1.70	218	1.62	1.70	179	1.55
Melrose, Conn.....	122	1.30	.....	1.70	220	1.62	1.70	181	1.55
Hazardville, Conn.....	125	1.30	.....	1.70	223	1.78	1.70	184	1.70

¹ Jersey City, Newark, Secaucus, Croxton, and Weehawken.

² Carload minimum, 30,000 pounds.

³ Carload minimum, 50,000 pounds.

The relation between rates from Harlem River and from harbor points has varied during the past five years. Effective April 15, 1911, rates from Brooklyn, Jersey City terminals, and New York lighterage points were made 60 cents higher than the rate from Harlem River, which was then, as now, \$1.30. On May 15 of the same year New York lighterage points were placed on the same basis as Harlem River, but the differential of 60 cents was continued as to Brooklyn and the Jersey shore. On May 29, 1913, this differential was reduced to 40 cents upon traffic destined to the principal consuming points. On June 5, 1915, the differential was eliminated, and the present blanket rate of \$1.30 became effective from all points. This is not a specific rate, but is based upon a distance tariff applicable between all stations on the New Haven and Central New England, including Boston, which city competes with New York in the sale of manure at the Connecticut points named. The distances from Harlem River and from the New Haven terminals at Boston being approximately the same, the rates to the principal points of consumption are equal. Under the present adjustment the rates from New York harbor points are no higher. The respondents, however, claim that the greater service involved in transporting manure from harbor points justifies an additional charge. The usual charge for floatage in New York harbor is 60 cents per ton, but respondents testify that in this case the added charge for floatage was made 20 cents less in consideration of the fact that the commodity is used in the production of other commodities which contribute to the carriers' traffic.

The traffic from the Jersey shore via the Erie and connections moves principally to the group of Connecticut stations before described; the remainder to a group of New York points near the Hudson River. The rates to Connecticut points were established prior to the acquisition by the New Haven of the Central New England Railway and have not borne a definite relationship to the New Haven rates from Harlem River or other New York points. For example, the present rate via the Erie and connections from Jersey City to East Granby, Conn., a distance of 194 miles, is \$1.26, and to East Windsor Hill, 212 miles, \$1.58. The New Haven rate from Harlem River to each of these points, distant 117 and 114 miles, respectively, is \$1.30. The proposed rate of the Erie to all of these points is \$1.70, meeting the proposed rate of the New Haven from New York harbor points but exceeding by 40 cents the rate from Harlem River. There is no contention that there is a terminal service at the Jersey shore that is analogous to the float service of the New Haven, and any justification for placing these rates or a parity must be found in other circumstances.

The average distance from Harlem River to the Connecticut consuming points shown in the table is about 116 miles; from the Jersey shore via the Erie and connections, 209 miles. Traffic from Harlem River moves over a single line, while that from the Jersey shore moves over two lines, considering the New Haven and its subsidiary, the Central New England, as a single line. The carload minimum of the New Haven is 30,000 pounds; that of the Erie is 50,000. Based on the average distance of 116 miles to the points shown in the table, the average earnings on manure originating at Harlem River are 11 mills per ton-mile; and if, in figuring the earnings on this commodity moving through that gateway, 40 cents were deducted from the Harlem River rate, the result would be 7.8 mills per ton-mile for the line haul. This is somewhat higher than the average earnings for the longer haul from the Jersey shore via the Erie and its connections, 7.4 mills, figured by dividing the average of the current rates, \$1.55, by the average distance, 209 miles. Under the proposed rate of \$1.70 this would be increased to 8.1 mills. Based on the minimum of 50,000 pounds applicable via the Erie and connections and the average rate stated, the average earnings on manure from the Jersey shore would be increased from \$38.75 to \$42.50 per car, and from 18 cents to 20 cents per car-mile. The earnings on this weight from Harlem River to the points in question are \$32.50, or 28 cents per car-mile; and the increase from the New York harbor points would be \$10.

The protestants made no specific complaint of the proposed increases in rates to the New York group of destinations, although the increases are material. For example, the present rate from the Jersey shore to Clintondale and Highland, representative points, is \$1.05; to Pleasant Valley and Rhinebeck, \$1.16. The proposed rate to all stations in this group is \$1.20. The bulk of the traffic to this territory is carried by the New York Central from New York City points, connecting with the Central New England at Beacon, Poughkeepsie, and Rhinecliff. To the majority of destinations this route is the shorter. Prior to January 20, 1916, the New York Central rate to all of these points was \$1.10, but on that date a rate of \$1.20 became effective. The proposal of the Erie is therefore to meet the new rate of the New York Central. The distances are substantially similar, a joint haul is involved in either case, and the carload minima are the same. The record is bare of specific evidence relating to such important matters as the detail of terminal service, the average loading of cars, and the amount of necessary empty car movement. We note, however, that the volume of this traffic via the Erie is small, amounting in 1914 to 654 tons and in 1915 to about 675 tons. The average earning per ton-mile is about 1.3 cents for an average haul of about 92 miles over two lines of railroad. The present tariff

of the New Haven, which became effective June 5, 1915, names a rate of \$1.20 for distances from 90 to 110 miles between stations on its line, and specific rates for similar distances had previously been in effect.

There was practically no evidence submitted in support of the inherent reasonableness of the proposed through rates, the contention of the respondents apparently being based upon assumptions, first, that the reasonableness of the New Haven's line-haul rates should, under the circumstances, be presumed, and, second, that the fact that the rates via the longer haul of the Erie and its connections would be equalized with those applicable through Harlem River is sufficient justification for the increases proposed in the former. The Brooklyn shippers, who are mainly interested in the proposed increase in rates via Harlem River, did not challenge the reasonableness of the proposed rates, but based their protest upon the ground of discrimination, claiming that the same rates should apply from harbor points as from Harlem River.

In cases where charges for a particular terminal service, such as lightering, have been absorbed and it is proposed to maintain the same rates to or from the terminal but to add thereto what the carriers consider to be a reasonable charge for said terminal service, it should be affirmatively shown not only that the terminal charge, considered alone, is reasonable, but also that the through charge made by adding the proposed terminal charge to the line-haul charge is reasonable. In the present case it is proposed not only to increase the rates in the manner aforesaid, but also to equalize rates via another route on which the same terminal service is unnecessary, thereby increasing rates established prior to the acquisition of the Central New England by the New Haven, the carrier apparently most active in the proposed increase.

The burden of justifying the proposed increased rates is upon the respondents, and upon consideration of all of the facts of record we are of opinion, and find, that they have not sustained it, either as to the rates via Harlem River or via the Erie and its connections. The suspended tariffs will be required to be canceled.

INVESTIGATION AND SUSPENSION DOCKET No. 11.
LOUISIANA & PINE BLUFF DIVISIONS.¹

Submitted April 6, 1916. Decided July 5, 1916.

An out of line or diverted movement to a track scale may not properly be included under *The Tap Line Case*, 31 I. C. C., 490, when fixing the switching allowance or division that a tap line may receive from its trunk line connections.

S. D. Snow for Wisconsin Lumber Company.

Henry G. Herbel for St. Louis, Iron Mountain & Southern Railway Company.

R. F. Britton for Louisiana & Pine Bluff Railway Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The Wisconsin Lumber Company and the Union Saw Mill Company, hereinafter referred to as the Wisconsin company and the Union company, respectively, operate mills at Huttig, in the state of Arkansas. The plant of the Wisconsin company is located on the rails of the Louisiana & Pine Bluff Railway, while that of the Union company is contiguous to the tracks of the St. Louis, Iron Mountain & Southern Railway, these two lines being respectively referred to hereinafter as the Pine Bluff and the Iron Mountain. The Wisconsin company, the Union company, and the Pine Bluff are all owned or controlled by the same interests.

In *The Tap Line Case*, 34 I. C. C., 116, which report should be referred to for a complete understanding of the situation now before us, we held that the published rates on hardwood lumber applying from the mill of the Wisconsin company were unreasonable and unjustly discriminatory in so far as they exceeded the rates contemporaneously maintained on hardwood lumber originating on the rails of the Iron Mountain at Huttig. When that case was heard the rates on hardwood lumber from the mill of the Wisconsin company were 3 cents higher than the junction point rates or the rates on lumber from the Union mill, which, as heretofore stated, is located directly on the tracks of the Iron Mountain at Huttig. We also held that the complainant, the Wisconsin company, had been damaged by the Iron Mountain and Pine Bluff to the extent that the through charges assessed, since May 1, 1912, on the product of its mill exceeded the

¹ This is a supplemental proceeding in *The Tap Line Case*, 23 I. C. C., 277; 31 I. C. C., 490.

rates applicable on hardwood lumber from Huttig. A petition for rehearing filed by the Pine Bluff was granted, and the several questions raised thereon, as well as in the answer of the Wisconsin company, are now before us for consideration.

In our second supplemental report in *The Tap Line Case*, 31 I. C. C., 490, we revised the views announced in the original proceeding, thus conforming our own course in these matters to the rulings of the Supreme Court in *The Tap Line Cases*, 234 U. S., 1; and after a very careful study of the question we there fixed switching allowances and divisions for general application in this southwestern territory. For a haul of 3 miles or less under our order in that proceeding, which order is still in force throughout the territory, a tap line may receive a maximum allowance of \$3 a car. And this is the amount which the Iron Mountain has been paying to the Pine Bluff on lumber traffic from both mills at Huttig interchanged at Dollar Junction. The Pine Bluff, however, is here asserting that its haul to that junction is in excess of 3 miles, and that under our order in the case last cited it is therefore entitled, not to a switching charge of \$3 a car but to a division out of the through rate of $1\frac{1}{2}$ cents per 100 pounds, or approximately \$9 a car. It is important, therefore, that the distance from the two mills to Dollar Junction be accurately determined, and that, indeed, was one of the chief purposes in asking for a rehearing.

The measurements, which have been taken with care, show that the mileage actually traversed by the cars when moving between the mill of the Wisconsin company and the trunk line connection at Dollar Junction is 3.40 miles; and that between the Union plant and the same connection a car moves 3.25 miles. The mere statement of these distances, however, is not sufficient, especially in view of the facts in this case. It is shown of record that these distances include out of line or diverted movements to the track scales of 840 feet, in the case of shipments of the Wisconsin company, and of 4,380 feet, in the case of shipments from the Union mill. If these distances be deducted from the total haul the actual necessary mileage covered by the cars in direct movement to Dollar Junction is 3.24 miles from the Wisconsin mill and 2.41 miles from the Union mill. In other words, the Pine Bluff, in order to bring about an increase in its earnings, claims to be entitled to compensation for an out of line haul to the scale track of nearly a mile. Were we to lend our approval to any such arrangement not only would the Pine Bluff be placed in a more advantageous position than any other tap line in this territory performing a similar service, but such a ruling would open the way in the case of many tap lines for a relocation of their track scales so as to require a long back haul, and in that way to lay a basis for divisions or allowances very materially in excess of those fixed by the Commission for the distance covered by a direct movement from the mill to the junction.

Under the circumstances we can not lend our sanction to the demand for increased allowances to be paid to the Pine Bluff from the Union mill.

The second question to be determined is whether Huttig or Dollar Junction is the proper point of interchange between the Pine Bluff and the Iron Mountain. The record shows that ever since the construction of the tap line the interchange of cars has taken place at Dollar Junction, the necessary and ample facilities having been provided at that point. For a short period, during which the Iron Mountain was repairing its tracks near Dollar Junction, the interchange was made at Huttig. The only tracks at the latter point available for this purpose are the scale tracks heretofore referred to, the use of which, it is said, would seriously interfere with the handling of traffic. To provide facilities now for the interchange at Huttig would necessitate an entire reconstruction of the tracks at that point, the expense of which would be considerable. From the record before us no objection is found to the present practice of interchanging the cars at Dollar Junction. When made at that point the allowance by the Iron Mountain to the Pine Bluff on cars from the mill of the Wisconsin company should not exceed $1\frac{1}{2}$ cents per 100 pounds; from the Union mill the allowance should not exceed \$3 a car. These are the allowances that obtain under our second supplemental report, *supra*, throughout the entire territory. Should the interchange be effected at Huttig under our order in that case the Iron Mountain may pay to the Pine Bluff \$2 a car on shipments from either mill.

A third question suggested on the rehearing is with respect to certain shipments from Huttig which moved in the course of the journey across the state line into another state in order to reach destinations in the state of Arkansas. Apparently it is contended that as such shipments had their origin and destination in that state they were not subject to the act to regulate commerce. It has long been the settled doctrine, however, that such movements come within the act. As to such shipments the interstate rates were applicable and reparation should be awarded on the basis of our former decision.

The last question involved on the rehearing relates to certain shipments of logs moving over the Iron Mountain from Wham, in the state of Louisiana, to Huttig and there turned over to the Pine Bluff for delivery at the mill of the Wisconsin Lumber Company. For such a movement the tariffs of the Iron Mountain provided a gross rate of 7 cents per 100 pounds and a net rate of $2\frac{1}{2}$ cents per 100 pounds when the lumber manufactured from the logs moved out from the mill over the Iron Mountain rails. That tariff, however, expressly provided that the Iron Mountain would not absorb any switching charge either at the originating point of the logs or at the

mill point. The Iron Mountain therefore refuses to absorb the charges of the Pine Bluff for its haul from the Iron Mountain junction to the mill. As a matter of fact the Iron Mountain has been paying the switching charge of the Pine Bluff in the first instance, but in its settlement with the lumber company on the basis of the net rate it has deducted these charges. The lumber company has therefore paid the log rates of the Iron Mountain and the switching charge of the tap line. The complainant admits the propriety of the additional charge for switching the logs from the Iron Mountain rails to its mill at Huttig, but it denies the propriety of the charge of the Pine Bluff for switching the outbound lumber product back to the rails of the Iron Mountain. Under the Iron Mountain tariffs its lumber rate does not apply from the mill when the lumber is made from logs that have had the benefit of its net log rates. Tariffs on file with the Commission show that this is the general tariff condition in this lumber territory.

From the facts shown of record it is clear that the Iron Mountain does not discriminate against the complainant by its refusal to absorb the charges of the Pine Bluff for switching the logs to the mill or the product of the logs from the mill to the rails of the Iron Mountain at Huttig. On inbound logs and outbound lumber interchanged with the Iron Mountain at Huttig the switching allowance by the Iron Mountain to the Pine Bluff should not exceed the maximum of \$2 a car fixed by our order of July 29, 1914. If the Pine Bluff accepts the logs from the Iron Mountain at Huttig no reason is shown upon this record why the products of those logs should not be returned to the trunk line at the same point.

The amount of reparation due to the complainants and the proportions thereof to be paid by each of the defendants was not determined upon the former record, nor can this be done upon the record now before us. The Wisconsin Lumber Company should prepare a statement showing as to each shipment on which reparation is claimed the date of movement, point of origin, route, final destination, weight, rate applied, charges collected, and the amount of reparation due under our findings herein, together with proof that they bore the charges, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared by the Wisconsin Lumber Company and verified by defendant we will consider the entry of an order awarding reparation.

INVESTIGATION AND SUSPENSION DOCKET No. 758.

NASHVILLE SWITCHING.

Submitted May 20, 1916. Decided June 30, 1916.

Charge of \$7.50 per car proposed by the Nashville Terminals for switching at Nashville, Tenn., found unreasonable to the extent that it exceeds \$5 per car.

W. A. Colston and J. F. Davis for Louisville & Nashville Railroad Company.

R. Walton Moore, Frank W. Gwathmey, and Fitzgerald Hall for Nashville, Chattanooga & St. Louis Railway.

Walter Stokes for Tennessee Central Railroad Company and its receivers.

T. M. Henderson and M. S. Ross for Traffic Bureau of Nashville.

A. G. Ewing, jr., for city of Nashville.

REPORT OF THE COMMISSION.

MEYER, Chairman:

This proceeding involves switching charges proposed for application at Nashville, Tenn., as a result of our decision in *City of Nashville v. L. & N. R. R. Co.*, 33 I. C. C., 76, to the effect that the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway preferred each other and unjustly discriminated against the Tennessee Central Railroad in the matter of switching at Nashville.

The two respondents first named maintain and operate jointly their several terminal facilities at Nashville, except their individual team tracks and freight depots. Each road contributes tracks, locomotives, and other facilities and the expense of maintenance and operation is apportioned monthly on the basis of the number of cars and locomotives handled for each road. Certain terminal buildings, tracks, and other facilities leased by respondents jointly also are contributed. The arrangement is called the Nashville Terminals and is managed by a board composed of the general managers of the two roads and a superintendent of terminals. All of respondents' trains move to and from a terminal yard in the center of the city and are hauled to and from the yard by the road engines. All other service is performed through the agency of the Nashville Terminals. The Tennessee Central is reached at Shops Junction

on the Nashville, Chattanooga & St. Louis in the western part of the city and at Vine Hill on the Louisville & Nashville just beyond the switching limits of the city on the south. Only the connection at Shops Junction is used.

Shippers over the Tennessee Central have paid nothing in addition to the line-haul rates for switching by the Tennessee Central, but have been charged \$3 per car by the Nashville Terminals for switching noncompetitive traffic to and from the Tennessee Central and at rates equivalent to from \$7 to \$36 per car for switching competitive traffic. Shippers over respondents' lines have paid nothing in addition to respondents' line-haul rates for switching by the Nashville Terminals, but have been charged \$3 per car by the Tennessee Central for switching noncompetitive traffic to and from the Nashville Terminals and at rates equivalent to from \$5 to \$36 per car for switching competitive traffic. We found in *City of Nashville v. L. & N. R. R. Co.*, *supra*, that the Nashville Terminals arrangement constituted a facility for the interchange of traffic between respondents' roads; that both competitive and noncompetitive traffic was being switched by respondents for each other; that respondents' refusal to switch competitive traffic to and from the Tennessee Central on the same terms as noncompetitive traffic while they switched both kinds of traffic on the same terms for each other was unjustly discriminatory; and that so long as they switched both competitive and noncompetitive traffic for each other at cost, they could not charge more than the cost of the service for switching both kinds of traffic to and from the Tennessee Central. An order was entered requiring respondents to cease refusing to switch interstate competitive traffic to and from the Tennessee Central at Nashville on the same terms as interstate noncompetitive traffic while they interchanged both kinds of traffic on the same terms with each other, and to establish and apply rates and charges for switching interstate traffic to and from the Tennessee Central that should not be different from the rates and charges applied on shipments to and from each other's lines. The federal district court refused to enjoin our order, and later the Supreme Court refused to stay it pending the determination of the appeal which was taken from the order of the lower court. Respondents operating the Nashville Terminals thereupon filed, in the name of their agent, W. P. Bruce, a tariff to take effect December 10, 1915, providing a switching charge of \$7.50 per car for all traffic handled by the Nashville Terminals. Respondents filed tariffs to take effect the same date, providing for the absorption of the Nashville Terminal's charges on all traffic to or from Nashville over their respective lines and of the charges of the Tennessee Central up to \$7.50 per car for switching competitive traffic to or from the rails of the Nashville Terminals. All three

tariffs were protested by the city of Nashville and the Traffic Bureau of Nashville and were suspended until April 8, 1916. The Tennessee Central filed a tariff to take effect January 8, 1916, providing a switching charge of \$3 per car on all noncompetitive traffic to and from Shops Junction and local charges ranging from \$5 to \$36 per car on all competitive traffic. This provision also was suspended until April 8, 1916. We had found in the *City of Nashville Case* that the maintenance by the Tennessee Central of a charge of \$2 per car for switching both competitive and noncompetitive grain between Shops Junction and the Hermitage elevator, while \$3 per car was charged on all other noncompetitive traffic and local charges ranging from \$5 to \$36 per car were charged on all other competitive traffic was unjustly discriminatory. The suspended provision of the Tennessee Central's tariffs would eliminate this discrimination by canceling the \$2 charge on Hermitage elevator traffic. All of the suspensions were subsequently continued until October 8, 1916.

The Nashville Terminals' proposed charge of \$7.50 for both competitive and noncompetitive traffic would comply with our order in the *City of Nashville Case*, and the principal question presented is whether it would be reasonable. Respondents contend that it would be less than the cost of the service plus a reasonable return on the value of the property devoted to it. Protestants insist that it would greatly exceed the cost of the service and that respondents can not adopt a cost basis for the reason that cost is disregarded at all other points on their lines where they switch for other railroads. The reasonableness of the charges proposed by the Tennessee Central for switching grain also is in issue. The further questions whether respondents should absorb switching charges up to \$7.50 per car maintained by the Tennessee Central on noncompetitive traffic as well as on competitive traffic, and whether the Tennessee Central should absorb all or part of the switching charges maintained by the Nashville Terminals, have not been argued and will not be considered at this time.

The Nashville Terminals handle passenger traffic, through freight traffic, and traffic originating or terminating at Nashville, hereinafter called city freight traffic. Many of the facilities maintained and operated are used for all three kinds of traffic, and the expenses incurred are only in part assignable directly to any one kind of traffic. The cost of handling city traffic can accordingly only be estimated. Respondents' estimate, including returns on both tangible and intangible property, is \$11.33 per car as follows: Operating expenses, \$4.47 per loaded car; taxes, 7 cents per car; return on tangible value, \$3.40; return on intangible property, \$3.40.

The operating costs for the Nashville Terminals with corrections by respondents are exhibited for a test period of six months ended January 31, 1914, as follows:

Item.	Charged to passenger traffic.	Charged to through and city traffic.	Charged to city traffic only.	Charged to through traffic only.
Maintenance of way and structures.....	\$16,459.16	\$85,280.86	\$132.99	.....
Maintenance of equipment.....	7,020.12	31,615.10	14,618.39	\$17,342.01
Transportation expenses.....	58,949.19	325,364.76	14,266.53	12,240.18
General expenses.....	4,191.38	26,387.00	.....	.....
Total.....	86,619.85	468,647.72	.....	.....
Distribution of through and city traffic:				
Charged to city traffic, 76.17 per cent.....			356,968.97	.....
Charged to through traffic, 23.85 per cent.....				111,678.76
Station employees, freight, and station supplies and expenses.....		116,743.27		.....
Charged to city traffic.....			9,748.06	.....
Charged to through traffic.....				106,995.21
Freight-train car repairs.....		17,342.01		.....
Charged to city traffic.....			8,137.74	.....
Charged to through traffic.....				9,204.27
Total.....			403,872.68	257,460.42
Number of loaded freight cars handled.....			92,774	103,322
Average cost per loaded city freight car.....			\$4.35	.....
Traffic expenses per loaded car.....			.12	.....
Total average operating cost per loaded city freight car.....			4.47	

The Nashville Terminals' agreement provides for the separation of passenger traffic expense and freight traffic expense and the further separation of the latter into train yard expense and freight house and private sidings expense. Accounts have been kept on this basis, but the total cost of handling city freight traffic alone can not be directly determined from them, because the train yard expense covers both through and city traffic. The cost of handling less-than-carload traffic in freight houses is not included in this statement.

The allocation of the first four items in the above table under "through and city traffic" to city and through traffic was on the basis of the time of switching crews devoted to each service, some of the switching crews' time being assigned directly and the remainder apportioned on the basis of the number of loaded cars handled, through cars being counted once and every city carload once, whether inbound or outbound. Apportioning the whole block of common expenses on a single basis is not unquestionable, particularly with respect to the separation of maintenance of way expenses. The separation of the terminal into sections and the apportionment of the expenses of each section on the basis of the use made of it would have been more acceptable. But this could not be done in the absence of special statistics and the final result might not have been very different. Another objection is that the monthly settlements by

respondents of the Nashville Terminals' accounts show train yard expenses considerably in excess of house and private siding expenses, while the exhibits under consideration show expenses charged directly to city traffic considerably greater than the expenses charged to classification in the train yard. This objection was met in part at least by a showing that the extra switching done for through cars in bad order, re-iced, or otherwise rehandled made but slight difference in the percentages used. A third objection is that the test period is not entirely representative, as the following table shows, although it was asserted that unusual retrenchments had recently been made:

Period.	Freight expenses as charged in monthly settlements.	Units of equipment handled.		Freight cars handled.	
		Train yard.	House and private sidings.	Loaded.	Empty.
1913.					
January-June.....	\$515,377	493,787	399,296	(1)	(1)
July-December.....	510,488	466,566	360,066	(1)	(1)
1914.					
January-June.....	493,140	485,702	366,006	306,666	129,743
July-December.....	431,998	440,306	363,621	288,915	114,955
1915.					
January-June.....	398,709	409,482	330,223	275,483	103,070
July-December.....	414,430	456,636	371,991	320,248	106,434
Monthly average.....	76,782	76,458	60,866	.....	.....
Test period of six months ended Jan. 31, 1914:					
Total.....	513,495	476,990	364,030	297,994	125,213
Monthly average.....	85,583	79,498	60,672	.....	.....

¹ Not given.

The average monthly expense for the test period is thus 11.5 per cent in excess of the monthly average for the three years shown. The units of equipment handled in train yard operations average about 4 per cent more than the monthly average for the three years, while the units of equipment handled in house and private siding switching averaged something less for the test period than for the three-year period. The increase in the numbers of units of equipment handled is due to the increase in the numbers of empty cars, and not the loaded cars. As respondents' calculations aim at cost per loaded car, it is possible that if the expenses for the years 1913, 1914, and 1915 had been included the average cost per loaded city freight car would have been about 11 per cent less than the cost shown. It is also possible, however, that the diminution in expenses since January, 1913, is not assignable proportionately to city cars.

The general expenses shown include some directly assignable expenses and 5 per cent of the maintenance of way and structures,

equipment, and transportation expenses. Respondents found that the general expenses of numerous terminal companies amounted to a little more than 5 per cent of their transportation and maintenance expenses. The traffic expenses shown are based on the ratio of the Louisville & Nashville's system traffic expenses to the total expenses of the system.

The total taxes paid on Nashville Terminals property, both localized and distributable, for the calendar year 1914 amounted to \$24,970.98, but as the test period was only six months respondents use only one-half of this sum, or \$12,485.47, in their calculations, dividing it in the ratio of operating expenses for city traffic to total operating expenses. The ratio is 53.98 per cent, which gives \$6,739.66 as taxes assignable to city traffic, or 7 cents per car.

Tangible property dedicated to use in the Nashville Terminals was asserted to be \$12,170,188.60 on the basis of cost of reproduction, less depreciation of equipment. Depreciation for maintenance of equipment is charged to the operating expenses, but not for maintenance of way and structures. The value assignable to city freight traffic is placed at \$8,055,706.07, on which interest calculated at 8 per cent for six months amounts to \$322,228.25. This sum divided by 92,774 city carloads gives \$3.47 per car, from which 3 cents per car must be deducted on account of rentals received. Respondents' estimate of \$3.40 is based on 95,958 city carloads, which figure was subsequently corrected to 92,774.

The valuation taken was made by respondents' engineers and is subject to criticism in respect of the land valuations which it includes. Part of the land was valued by two local real estate dealers at "its fair cash or market value," the remainder by an engineer of the Louisville & Nashville, who sought the cost of carving out a continuous strip of land through populated city blocks. The same engineer has since given an estimate on land values based on the value of adjacent property, and another witness showed that on this basis the total value of all property assignable to city freight traffic is \$4,686,397.65. Interest on this sum at 8 per cent for six months amounts to \$187,455.90, or \$2.02 per loaded city car; interest at 7 per cent, to \$1.76 per car; interest at 6 per cent, to \$1.51 per car. Respondents' system operating ratios have been as follows:

	1915	1914	1913
Louisville & Nashville.....	76.41	75.03	75.86
Nashville, Chattanooga & St. Louis.....	83.20	78.88	78.89

Applied to the estimated operating expenses of the Nashville Terminals of \$4.47 per city freight car, the lowest of these ratios gives 40 I. C. C.

a rate of \$5.95 per loaded car, while the highest ratio gives \$5.37. The difference between \$5.95 and \$4.47 is \$1.48 per car in comparison with a return of \$1.51 per car on tangible value at 6 per cent.

The intangible value of the property on which a return is asked is not very clearly defined. One witness defined it as the value added to respondents' several lines by the welding together of the separate divisions of the lines. Nearly every foot of track maintained is as important in this respect, however, as the terminals at Nashville or anywhere else. Whether a railroad is entitled to add something to the physical value of its various properties because of their unification and operation as parts of a single system is a question of valuation that has not yet been decided and which can not be decided upon the evidence before us at this time. How much, if anything, should be added to the value of respondents' tangible properties as a whole on this account does not appear, nor is any persuasive method suggested for computing either the system value or the value of the particular properties operated by the Nashville Terminals. Various values are suggested for the terminal properties at Nashville, including a value of \$50,000,000, but none of these estimates amounts to much more than a guess. The \$50,000,000 valuation admittedly can not be localized and is "the connected value which is spread over the entire system." It is obtained by capitalizing the estimated net earnings of \$4,000,000 from traffic using the Nashville terminals, on an 8 per cent basis.

Other witnesses argue that respondents operating the Nashville Terminals are entitled to a return on the intangible value of this property in that these terminals aid in securing and holding traffic. They estimate that these respondents will lose traffic to the Tennessee Central through the opening of their terminals to the extent of 8,117 loaded cars per annum, net, and revenue to the extent of \$190,530, or \$23.47 per lost car, although the division of this revenue by the total number of cars that would probably be retained gives a quotient of only about \$2. It may be that respondents are entitled to some compensation for traffic lost as a result of opening the Nashville Terminals to Tennessee Central traffic. We do not decide the question because the amount of compensation to which they may be entitled can not be determined on the basis of mere estimates of prospective loss. If it shall appear that loss is actually being sustained, respondents may bring the situation to our attention. We may observe, however, that the opening of the Nashville Terminals not improbably will increase the importance of Nashville as a shipping and receiving point and that a general increase in respondents' traffic sufficient to counterbalance any loss of traffic to the Tennessee Central is not impossible.

Figures relative to the cost of switching in the Nashville terminals of the Tennessee Central are in evidence which amount to \$1.80 per car. But this estimate was not made on the same basis as the estimate of the other respondents and additional figures submitted relative to strictly comparable items, such as wages of yard enginemen and brakemen, fuel and lubricants, i. e., expense accounts 377 to 389, inclusive, in the classification of operating expenses which we prescribe, show that the costs in the two terminals are substantially the same, as follows:

Yard engine expenses compared with the number of loaded cars for the six months ended Dec. 1, 1915.

	Nashville Terminals.	Tennessee Central at Nashville.
Operating expenses for the accounts named.....	\$280,120	\$25,857
Per cent of total yard engine hours performed for freight service.....	7.86	5.93
Freight proportion of expense on basis of yard engine hours.....	\$258,103	\$24,324
Number of loaded cars received and forwarded.....	320,249	28,225
Expense per loaded car for accounts named.....cents..	80.6	86.2

We concluded that \$7.50 per car would yield more than fair remuneration for the service performed, and that no charge above \$5 per car would be justified from the evidence.

Protestants cite switching charges at numerous points in the southeast on both state and interstate traffic, none of which exceeds \$4 per car. The charges for intrastate traffic are commission made and the basis on which they are computed is not disclosed. The charges on interstate traffic are based on the theory of reciprocal service alleged to be in total disregard of the cost of the service. None of these charges militates against the charges proposed at Nashville, therefore, if the latter may lawfully be based primarily on cost and fair return on investment.

Carriers should endeavor to conduct their switching operations for other carriers without loss, and charges for their services based on cost are preferable to nominal charges based on so-called reciprocity in service. See *Switching at Galesburg, Ill.*, 31 I. C. C., 294. But a cost basis can not fairly be adopted at one point on a carrier's lines, while a nominal charge basis is retained at all other points on its lines where connecting line switching is done, provided, of course, that injury results. Substantial injury resulting from such a course would clearly constitute undue prejudice.

Shippers at Nashville compete with shippers at Chattanooga, Tenn., and similar points. The switching charges maintained at these points are not based on cost, but there is no evidence that Nashville shippers would be handicapped by the charges proposed at
40 I. C. C.

Nashville in meeting such competition. Respondents challenged protestants to show in what way and to what extent shippers at Nashville would be injured, but without eliciting any convincing replies. Not every difference in rates to competing points from common points of origin constitutes unjust discrimination, *City of Astoria v. S., P. & S. Ry. Co.*, 38 I. C. C., 16, and different switching charges at competing points may also be entirely equitable. The complete exclusion of Tennessee Central traffic from the Nashville Terminals would injure Nashville as a city and hinder its growth as an industrial center, as was found in the *City of Nashville Case*, *supra*, but it is not established that a switching charge of \$5 per car by the Nashville Terminals would exclude Tennessee Central traffic. Protestants fear that the Tennessee Central can not afford to absorb a charge of \$7.50 per car and apparently believe that any charge which the Tennessee Central can not absorb must be too high. But the reasonableness of charges maintained by one carrier can not be judged by the ability or inability of a connecting competitor to absorb them. *Seattle Chamber of Commerce v. G. N. Ry. Co.*, 30 I. C. C., 683. It does not appear, moreover, that the Tennessee Central can not absorb \$5 per car.

We find that the switching charges proposed by the Nashville Terminals would be unreasonable, but that a charge not exceeding \$5 per car would not be improper, and that switching charges by the Tennessee Central for switching in its terminals at Nashville in excess of the charge found reasonable for the Nashville Terminals are and for the future will be unreasonable. The \$5 charge thus found reasonable must, moreover, be understood to relate exclusively to Nashville and to be determined by conditions there as shown to exist at the present time upon this record.

The tariffs under suspension will be ordered canceled, but without prejudice to the publication of charges conforming to the conclusions herein expressed.

No. 7504.
WEDRON WHITE SAND COMPANY
v.
**CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY ET AL.**

Submitted July 13, 1915. Decided June 29, 1916.

Rate charged for the transportation of a carload of sand from Wedron, Ill., to Salt Lake City, Utah, found not to have been unreasonable. Complaint dismissed.

Abraham Warsaw for complainant.

C. E. Spens for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the sand business at Wedron, Ill. By complaint, filed November 23, 1914, it alleges that the rate charged by defendants for the transportation of a carload of sand from Wedron to Salt Lake City, Utah, in May, 1913, was unreasonable. Reparation is asked.

The shipment weighed 55,100 pounds, and charges were collected in the sum of \$286.52 at a rate of 52 cents per 100 pounds, minimum 40,000 pounds. On January 30, 1915, defendants established a rate of 40 cents per 100 pounds on sand from Wedron to Salt Lake City, minimum 80,000 pounds. Complainant originally alleged that the rate charged was unreasonable to the extent that it exceeded 32.5 cents per 100 pounds, the rate in effect from certain Illinois points to Colorado common points, but, at the hearing, expressed satisfaction with the 40-cent rate subsequently established.

No evidence was offered to show that the rate charged was unreasonable or unjustly discriminatory, other than that the rate on sand from Wedron to Spokane and Seattle, Wash., was 40 cents per 100 pounds and from Wedron to San Francisco, Cal., 50 cents per 100 pounds. Complainant relies principally upon the misquotation of a rate of 32.5 cents by the initial carrier's agent prior to the movement of the shipment.

The rate charged earned 6 mills per ton-mile, or 16.6 cents per car-mile, for a haul of 1,725 miles. The present rate yields 4.6 mills per ton-mile and 18.5 cents per car-mile. The charges on a similar shipment at the present rate and minimum weight would exceed the charges collected.

The claim for reparation is not sustained, and the complaint will be dismissed.



No. 7139.

NATIONAL COMMERCIAL FIXTURE MANUFACTURERS
ASSOCIATION

v.

ANN ARBOR RAILROAD COMPANY ET AL.

Submitted June 18, 1915. Decided June 27, 1916.

Upon complaint that the classification applied by defendants to clothing cabinets, counters, partitions, shelving, shelving bases, show cases, show-case frames, and wall cases is unreasonable and unduly preferential; *Held*, That the classification of these articles should be revised in accordance with the views here expressed. Reparation denied.

Ernest L. Ewing for complainant.

D. P. Connell and *R. N. Collyer* for official classification lines.

Elvert M. Davis for Grand Rapids & Indiana Railway Company; Pennsylvania Railroad Company; Pennsylvania Company; and Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company.

REPORT OF THE COMMISSION.

HALL, Commissioner:

The complainant is a voluntary association of manufacturers of store furniture and fixtures, having its principal office at Grand Rapids, Mich. By complaint, filed July 29, 1914, it alleges that the defendant carriers are parties to official classification No. 42, effective July 1, 1914; that in this No. 42, under the heading of "store or office fixtures," page 259, items 7 to 15, inclusive, and page 260, item 1, the defendants have established new descriptions and classification of cabinets, counters, partitions, shelving, show cases, and wall cases, with advanced ratings and increased carload minimum weights; and that the new descriptions, classification, and ratings are excessive,

unreasonable, unjustly discriminatory, and unduly preferential, in violation of sections 1, 2, and 3 of the act. Reparation is asked on such shipments as may be shown to have moved since July 1, 1914.

Since the submission of this case official classification No. 42 has been superseded by official classification No. 43. The descriptions and ratings in effect at the time of the hearing have not been changed by the new classification, and no further reference to it need be made.

It should be stated at the outset that the changes appearing in No. 42 were brought about by certain recommendations of the Committee on Uniform Classification, made after an extensive investigation and submitted to the official, southern, and western classification committees. The organization and purpose of the Committee on Uniform Classification, hereinafter referred to as the uniform committee, is sufficiently explained in the *Western Classification Case*, 25 I. C. C., 442, 457. The official, southern, and western classification committees will be referred to as the official, southern, and western committees, respectively.

The articles brought together in No. 42 under the caption of "store or office fixtures" had appeared in previous issues under their respective names in alphabetical order. Their grouping was recommended by the uniform committee for the following reasons: Under the official classification, carload mixtures are effected by application of rule 10, which permits the mixing of practically any article which has a carload rating with any other having a carload rating. In the western and southern classifications mixtures are effected by specific provision and not by rule. Therefore, when the uniform committee submits a proposal for revising the classification, it arranges the items so that the plan of mixtures in effect in the western and southern classifications may be continued when carriers operating thereunder accept the recommendation. This, of course, does not interfere with the working of rule 10 in the official classification.

The uniform committee had recommended that the articles grouped should be shown under the caption "store fixtures." In the opinion of the official committee, the frequent use in offices of some of these articles warranted the insertion of the words "or office" and the caption recommended was changed to "store on office fixtures."

The members of the complainant organization do not object to this change, but desire to substitute "furniture" for "fixtures."

It was stated that the word "fixtures" was a survival from the time when such articles were installed as part of the building. Since then a new industry has grown up which has completely transformed the old conception of "store fixtures." The modern equipment in stores, it is said, can not properly be distinguished from furniture.

Complainant's real objection to the word "fixtures" seems to be based on the fear that its use will lead to increased rates. There are commodity rates on "furniture" in western classification territory, and the articles manufactured by complainant move under these rates. Complainant is apprehensive that the adoption of the recommendations of the uniform committee by the western committee will debar shippers of "store fixtures" from further using the "furniture" rates. We are of opinion that the questions thus sought to be raised are not here in issue. If commodity rates on the articles now before us are justified by sound transportation considerations, we should look for their retention, irrespective of classification descriptions. Whether "furniture" is now a better description of complainant's products than "fixtures" we need not determine. They have always been called fixtures by the manufacturers, they are so known to the trade, and we note the use of that word in the name of the complainant association.

We find that the grouping of the articles in question under the caption "store or office fixtures" has not been shown to be unreasonable.

We come now to a consideration of the descriptions and ratings made applicable to the several articles appearing under this caption in official classification No. 42. Except as hereinafter noted the descriptions there employed were those recommended by the uniform committee. It was stated on behalf of the official committee at the hearing that, with one exception, the only changes in ratings made in No. 42 were such as seemed to be required by the recommendations of the uniform committee. These recommendations, it was explained, made certain changes inevitable if the classification was to be continued on a consistent basis.

As already stated, the complaint puts in issue the descriptions and ratings provided for the following articles: Show cases, showcase frames, clothing cabinets, wall cases, counters, shelving, shelving bases, and partitions. The classification of these articles will be considered in their order. In the case of each article a comparison of its classification in No. 42, as amended at the time of the hearing, with its classification in No. 41, in effect prior to July 1, 1914, will be shown.

Show cases and show-case frames.

Provisions in classification No. 41.	L. C. L.	C. L.	Provisions in classification No. 42.	L. C. L.	C. L.
Cases:			Show cases, counter or floor (show cases, with glass fronts and with glass or wooden tops, backs, or ends), not otherwise indexed by name, see notes 1 and 3:		
Show, n. o. s.:			S. u., in boxes or crates.....	3t1	.....
K. d. flat, boxed (c. l., min. wt. 12,000 lbs.) (subject to rule 27).....	1	2	K. d. flat, in boxes or crates, see note 2.....	1	.....
N. o. s., boxed (c. l., min. wt. 12,000 lbs.) (subject to rule 27).....	3t1	2	In packages named, c. l., min. wt. 12,000 lbs. (subject to rule 27).....		2
Cabinets:			Show case frames (show cases without glass):		
Show, n. o. s.:			S. u., in boxes or crates.....	3t1	.....
K. d. flat, boxed (c. l., min. wt. 12,000 lbs.) (subject to rule 27).....	1	2	K. d. in flat sections, in boxes or crates, see note 2.....	1	.....
N. o. s., boxed (c. l., min. wt. 12,000 lbs.) (subject to rule 27).....	3t1	2			
Frames:					
Show case:					
Wood, k. d., flat, crated or boxed.....	1	.....		
N. o. s., s. u., boxed (c. l., min. wt. 12,000 lbs.) (subject to rule 27).....	3t1	2			
			lower case sections, constituting a complete show case, are shipped in separate packages, one section s. u. and the other section k. d. flat, the separate weights should be given and each section will be rated as a complete show case according to its condition of shipment.		

Except for a change in note 3 the provisions of No. 42, above shown, contain only one departure from the uniform committee's recommendation. The first word in the parentheses following show cases was changed by the official committee from "display" to "show." This change was made for the reason that small counter "display" cases, such as are used for small notions, had not been rated under the official classification as show cases, and it was the judgment of the official committee that so high a rating as was reasonable for the large and increasingly elaborate show cases would not be reasonable when applied to the small cheap "display" cases. The modification made by the official committee placed the so-called "display" cases back in the class of cases not otherwise specified. It appears that the only

distinction between a so-called "display" case and an ordinary show case is that the former is of smaller dimensions.

The rating of three times first class on show cases set up has been in effect for over 25 years. During that period show cases, both counter and floor, have undergone radical changes in construction. The modern show case is usually made entirely of plate glass and is a much heavier article than the show case formerly in vogue. Some of the larger show cases are shipped k. d., but the majority move set up.

Complainant urges that in view of the weight, displacement, value, etc., of show cases shipped set up, less than carloads, they should take no higher rating than one and one-half times first class. We are not convinced that such a rating would be proper.

After the hearing in this proceeding the defendant carriers, through the official committee, expressed themselves as satisfied that the present rating of three times first class should be reduced to double first class, and that the latter rating should be applied to the so-called "display" cases as well as to the other show cases now specifically provided for.

Upon consideration of all the facts of record we are of opinion and find that the less-than-carload rating now applicable to show cases set up is unreasonable to the extent that it exceeds double first class. We are further of opinion that the exception made by the official committee in favor of the so-called "display" cases should be eliminated. The view of the uniform committee that these latter cases are simply small sized show cases was not seriously controverted at the hearing.

Little evidence was directed to the ratings on show-case frames. It appears that these articles when shipped set up are considerably lighter than show cases. Defendants suggest that the present rating on this article when shipped k. d. flat should be advanced from first class to one and one-half times first class. No evidence was offered relating to this article when shipped k. d., and the defendants have not justified the advance proposed. It is our conclusion and finding that the ratings now applicable to show-case frames have not been shown to be unreasonable.

Notes 1 and 2 were recommended by the uniform committee. Note 3, which is now limited to show cases, represents an innovation made by the official committee. Complainant suggests a slight change in note 1 and defendants a modification of note 2. We are not of opinion that these changes should be made. The work of the uniform committee should not be discarded unless substantial reasons are shown.

In the descriptions for show cases recommended by the uniform committee separate provision for show cases, bases s. u. and upper sections k. d. flat, was made. No provision was made for shipments of show cases, bases k. d. flat, and upper sections s. u. The official committee believed that both classes of shipments should be provided for, and therefore added note 3. We approve of the modification thus made.

With the exceptions above noted, we find the present classification of show cases and show-case frames reasonable.

Interior arrangements for show cases are manufactured by members of the complainant association, and these interiors are frequently shipped with show cases k. d. While this article has apparently been accorded the rating applicable to cabinets n. o. s., doubt was expressed at the hearing as to whether, if shipped with a show case, it should not take the show-case rating. A specific classification of these articles is desired, and to meet this situation the defendant carriers have proposed the following addition to the items now appearing under "store or office fixtures":

	L. C. L.	C. L.
Show-case interiors, wooden or wood and metal combined (interior cabinets, drawers, or trays for show cases):		
In boxes or crates.....	1½	.....
In packages named, c. l., min. wt. 12,000 lbs. (subject to rule 27).....	.....	2

This classification appears to be reasonable and should be established.

Clothing cabinets.

Provisions in classification No. 41.	L. C. L.	C. L.	Provisions in classification No. 42.	L. C. L.	C. L.
Cabinets:			Store or office fixtures:		
Clothing, n. o. s.:			Clothing cabinets, see note 1:		
K. d. flat:			With glass doors, backs and ends and with glass or wooden tops:		
Wrapped, crated or boxed..	2	.....	S. u., in boxes or crates....	1½	.....
Min. wt. 16,000 lbs. (subject to rule 27).....	.....	3	K. d. flat, in boxes or crates, see note 2.....	1	.....
N. o. s.:			In packages named, c. l., min. wt. 12,000 lbs. (subject to rule 27).....	.....	2
Wrapped, crated or boxed..	1½	.....	With wooden backs and tops, glass doors and with glass or wooden ends:		
Min. wt. 12,000 lbs. (subject to rule 27).....	.....	2	S. u., in boxes or crates....	1½	.....
Show, n. o. s.:			Bases, s. u., upper sections k. d. flat, in boxes or crates, see note 2.....	1	.....
K. d. flat, boxed (c. l., min. wt. 12,000 lbs.) (subject to rule 27).....	1	2	K. d. flat, in boxes or crates, see note 2.....	1	.....
N. o. s., boxed (c. l., min. wt. 12,000 lbs.) (subject to rule 27).....	3½	2	In packages named, c. l., min. wt. 12,000 lbs. (subject to rule 27).....	.....	2

It would appear that some of the clothing cabinets specifically described in No. 42 were properly ratable as show cabinets under No. 41. All the shipments mentioned at the hearing, however, seem to have been accorded the clothing cabinet rating.

The higher less-than-carload rating on k. d. clothing cabinets shown in No. 42 was established because the uniform committee recommended that the minimum of 12,000 pounds provided for clothing cabinets s. u. be also made applicable to clothing cabinets k. d. As the official committee considered that the second-class rating should be applied in connection with the reduced minimum, it was necessary to raise the less-than-carload rating on k. d. clothing cabinets to avoid a conflict between the less-than-carload and carload ratings.

It will be noted that the recommendation of the uniform committee contemplates two distinct types of clothing cabinets. The first type, the cabinet of all-glass construction, was referred to throughout the hearing as the show-case type. It was generally conceded by complainant that the show-case ratings should be applied to this type. Clothing cabinets are largely shipped k. d. Upon consideration of the record we are of opinion and find that the ratings above found reasonable for show cases should be applied by defendants to clothing cabinets with glass doors, backs and ends.

We come now to a consideration of the ratings on clothing cabinets with wooden backs and tops, glass doors, and glass or wooden ends. It is clear that the less-than-carload rating on these cabinets k. d. flat was advanced as a result of the uniform committee's recommendation. As above explained, this advance was made to avoid a conflict with the carload rating. The propriety of a spread between the less-than-carload and carload ratings is obvious, but we are not of opinion that this consideration justifies the advance. Upon all the facts of record we find that the present less-than-carload rating on these cabinets when k. d. flat is unreasonable to the extent that it exceeds the second-class rating. We further find that the present carload rating on these cabinets is unreasonable to the extent that it exceeds rule 25.

It will be noted that the classification now provides for the shipment of the clothing cabinets here under discussion in the following form: "Bases, s. u., upper sections k. d. flat, in boxes or crates." Thus shipped, the cabinets take the first-class rate. In lieu of the above-quoted provision the defendants propose the application of note 3, which is now limited to show cases. This note has been discussed *supra* in connection with show cases. We are of opinion that the proposed modification should be made. With the exceptions above noted, we find the present classification of clothing cabinets reasonable.

Complainant concedes that no distinction in ratings between the different types of wall cases now provided for should be made. It is urged, however, that the present less-than-carload rating on set-up wall cases is unreasonable and should be reduced to first class. A review of the evidence does not support this contention.

A separate description with lower ratings is asked by complainant for the type of wall cases known as "unit cabinets." These cabinets, which are filled with trays and drawers, are always shipped set up. The ratings sought are, second class in less than carloads, and third class in carloads. A study of the exhibits contained in the record indicates that these unit cabinets are on an average heavier per cubic foot than the other types of wall cases.

We are of opinion and find that the differences indicated in this record are not such as to require the establishment of a separate classification for these cases.

Upon all the facts of record it is our conclusion and finding that the present less-than-carload ratings on wall cases are reasonable, but that the present carload rating on wall cases is unreasonable to the extent that it exceeds rule 25.

As in the case of clothing cabinets, provision is now made for the less-than-carload shipment of wall cases with the "bases, s. u., upper sections k. d. flat, in boxes or crates," at the first-class rating. Defendants suggest the elimination of this provision and the application of note 3. This note has already been referred to and the proposed modification in connection with clothing cabinets approved. We are of opinion that note 3 should likewise be applied in connection with shipments of wall cases. Apparently by error reference to note 2 has been omitted from the descriptions applicable to wall cases k. d. flat. This reference should, of course, be given as in the case of the other articles. With the exceptions noted, we find the present classification of wall cases reasonable.

Counters.

Provisions in classification No. 41.	L. C. L.	C. L.	Provisions in classification No. 42.	L. C. L.	C. L.
Counters and shelving (office or store) (see note): S. u., or in sections: Finished, crated, boxed or securely packed and covered with burlap.....	1½	.....	Counters, not otherwise indexed by name, wooden, with or without glazed bins or drawers, see note 1: S. u. or in s. u. sections, in boxes or crates.....	1½	.....
Unfinished, crated, boxed or securely packed and covered with burlap.....	1	.....	K. d. flat, in boxes or crates, see note 2.....	2	.....
Finished or unfinished, crated, boxed or securely packed and covered with burlap, min. wt. 12,000 lbs. (subject to rule 27).....	.....	3	In packages named, c. l., min. wt. 12,000 lbs. (subject to rule 27).....	.....	R 25
K. d. flat or packed flat: Finished, crated, boxed or securely packed and covered with burlap.....	1	.....		
Unfinished, crated, boxed or securely packed and covered with burlap.....	2	.....		
Finished or unfinished, crated, boxed or securely packed and covered with burlap, min. wt. 24,000 lbs. (subject to rule 27).....	.....	5			
NOTE.—The term “unfinished” will apply to the articles when primed but not varnished.					

In No. 41, counters were grouped with shelving, but in No. 42 each of these articles is separately classified.

It will be observed that No. 42 shows an advance in the carload rating on counters apparently not attributable to the elimination of the distinction between “finished” and “unfinished.” It was explained at the hearing that this is the only advance in the ratings before us which was not induced by the recommendations of the uniform committee. In the opinion of the official committee the third-class rating with the 12,000 pounds minimum was inconsistent with the ratings on similar commodities provided in the classification. The rating was therefore advanced to rule 25.

No movement of counters “unfinished” was disclosed at the hearing and no objection was made to the elimination of provisions applicable to counters so shipped.

Counters containing bins or drawers are on an average heavier than “shell” counters which contain no bins or drawers. Counters of the latter type are frequently shipped k. d., but counters with the bins or drawers can not be so shipped. Complainant urges that the difference in weights between the two types of counters entitles the heavier counter, when shipped s. u. in less-than-carload lots, to a rating of first class instead of the present rating of one and a half times first class. Defendants contend that no distinction between counters with bins and those without should be recognized in the classification.

It is stated that while a counter with bins or shelves is heavier than the same counter without bins or shelves, one counter with bins or shelves will be no heavier than another counter without them. The record in this proceeding does not indicate that the present descriptions are unjust. We are of opinion and find that the present classification of counters is just and reasonable.

It appeared at the hearing that at least one member of the complainant association ships what are known as "wall counter bases." These articles are now provided for in the classification under "bases." In the light of the facts developed at the hearing defendants suggest that these articles should properly be classified with counters. "Wall counter bases" are quite similar in appearance to the counters containing bins or drawers. No claim that these two articles should be rated differently is made, and we are of opinion that the proposed amendment should be adopted.

Shelving and shelving bases.

Provisions in classification No. 41.	L. C. L.	C. L.	Provisions in classification No. 42.	L. C. L.	C. L.
Counters and shelving (office or store) (see note):			Shelving, with open backs and fronts:		
S. u. or in sections:			S. u. or in s. u. sections, in boxes or crates.....	1½	.....
Finished, crated, boxed or securely packed and covered with burlap.....	1½	.....	K. d. flat, in boxes, bundles or crates.....	2	.....
Unfinished, crated, boxed or securely packed and covered with burlap.....	1	.....	In packages named, c. l., min. wt. 12,000 lbs. (subject to rule 27).....		3
Finished or unfinished, crated, boxed or securely packed and covered with burlap, min. wt. 12,000 lbs. (subject to rule 27).....		3			
K. d. flat or packed flat:					
Finished, crated, boxed or securely packed and covered with burlap.....	1	.....		
Unfinished, crated, boxed or securely packed and covered with burlap.....	2	.....		
Finished or unfinished, crated, boxed or securely packed and covered with burlap, min. wt. 24,000 lbs. (subject to rule 27).....		5			
NOTE.—The term "unfinished" will apply to the articles when primed but not varnished.					
Bases:			Shelving bases, wooden, not glazed:		
Back bar, wall counter and bottle case (saloon, barber shop or store):			S. u. or in s. u. sections, in boxes or crates.....	1½	.....
Not glazed:			K. d. flat, in boxes or crates.....	2	.....
Crated or boxed.....	1	.....	In packages named, c. l., min. wt. 12,000 lbs. (subject to rule 27).....		3
Wrapped, crated or boxed, min. wt. 10,000 lbs. (subject to rule 27).....		2			

Shelving and shelving bases were not separately provided for in No. 41, but were ratable as shown above.

No shipments of shelving "unfinished" were referred to at the hearing and no objection is made to the elimination of the provisions applicable to shelving so shipped.

The record contains little evidence relating to shelving “with open backs and fronts.” The present ratings applicable to the article appear to be reasonable and we so find.

The present rating on shelving bases, when shipped s. u. in less than carloads, is assailed by complainant as unreasonable to the extent that it exceeds first class. No contention was made that this article should be given ratings more favorable than those on “bin” counters.

It will be noted that the present carload rating provided for counters with or without bins is rule 25, and defendants propose to apply this same rating to the shelving bases. Upon all the evidence before us we are of opinion and find that the present less-than-carload ratings on shelving bases are reasonable and that the proposed carload rating of rule 25 should be established. With the exception noted, we find the present classification of shelving and shelving bases reasonable.

Partitions.

Provisions in classification No. 41.	L. C. L.	C. L.	Provisions in classification No. 42.	L. C. L.	C. L.
Partitions: Office, saloon or store, n. o. s.: Wooden or wood and iron or steel combined, s. u. or in sections (with or without gates) (see note): Finished, crated or boxed... Unfinished, crated, boxed or securely packed and covered with burlap..... Finished or unfinished, crated, boxed or securely packed and covered with burlap (min. wt. 24,000 lbs.) (subject to rule 27).... NOTE.—If glazed, the glass portion must be completely covered with board not less than 3/4 of 1 inch in thickness or packed in boxes. The term “unfinished” will apply to the articles when primed, but not varnished.	1 2 .....	..... ..... 5	Store or office fixtures: Partitions, wooden, not otherwise indexed by name, glazed or not glazed, see note 1: In boxes or crates..... In packages named, c. l., min. wt. 12,000 lbs. (subject to rule 27).....	1 .....	..... R.25

No objection was made at the hearing to the elimination of the provisions for partitions “unfinished.”

The only evidence offered by complainant with respect to partitions relates to the less-than-carload rating. It is urged that this rating should be the same as the rating on shelving k. d. in less than carloads. The defendants did not attempt to justify the first-class rating and it is our conclusion and finding that the present less-than-carload rating on partitions is unreasonable to the extent that it exceeds second class. We are further of opinion and find that the present carload rating of rule 25 is unreasonable to the extent that it exceeds third class. With the exceptions noted we find the present classification of partitions reasonable.

Certain changes in carload minima have been proposed by the carriers which contemplate departures from the uniformity of description recommended by the uniform committee. We realize that the minimum of 12,000 pounds provided for the articles before us is extremely low for official classification territory, but in the light of this record we are of opinion that this minimum should be preserved in the interest of uniformity. In the case of some of the articles the establishment of an appropriate rating to go with this minimum has left an abnormally narrow spread between less-than-carload and carload ratings. It should be understood that we have approved these ratings only because of the peculiar conditions here found.

The descriptions recommended by the uniform committee were apparently designed to prevent the shipment of articles that are substantially similar at different rates, or, in other words, to bring together for rating purposes articles which are really similar, although variously described by the manufacturers. It was the idea of the official committee in fixing the ratings on the articles thus grouped by the uniform committee that a reasonable relation between the ratings on these articles should be established. In reaching the conclusions announced *supra*, the purpose of both committees has been kept in view.

The classification herein approved involves both increases and reductions, and affords no proper basis for awarding reparation. Reparation is therefore denied.

Defendants, through the official committee, will be expected to establish the classifications herein found reasonable on or before September 1, 1916. If this is not done, the matter may be brought to our attention for the entry of an appropriate order.

40 I. C. C.

**INVESTIGATION AND SUSPENSION DOCKET No. 344.
COAL RATES FROM OAK HILLS, COLO.**

Submitted December 10, 1915. Decided June 28, 1916.

Original finding that the divisions accruing to the Denver & Salt Lake Railroad Company out of joint rates on bituminous coal from Oak Hills, Colo., to destinations on the Chicago, Rock Island & Pacific Railway should be \$1.18 per ton on all kinds of coal but nut, slack, and pea coal; and \$1.12 per ton on nut, slack, and pea coal, affirmed on rehearing with the modification that when the rate on nut, slack, and pea coal is the same as the rate on lump coal the Denver & Salt Lake Railroad shall receive a division on nut, slack, and pea coal of \$1.18 per ton.

Tyson S. Dines, Tyson S. Dines, jr., Carle Whitehead, and Albert L. Vogl for Denver & Salt Lake Railroad Company.

W. F. Dickinson and Wallace T. Hughes for Chicago, Rock Island & Pacific Railway Company.

**SECOND SUPPLEMENTAL REPORT OF THE COMMISSION ON PETITION TO
PRESCRIBE DIVISIONS.**

BY THE COMMISSION:

Our original report herein, 30 I. C. C., 505, required the establishment of joint rates on bituminous coal from Oak Hills, Colo., on the Denver & Salt Lake Railroad, hereinafter called the Moffat road, through Denver, to stations on the Chicago, Rock Island & Pacific Railway, hereinafter called the Rock Island, in Kansas, Nebraska, and Missouri. The carriers named were unable to agree upon divisions and the Moffat road applied for an order prescribing just and reasonable divisions of such joint rates which was granted, 35 I. C. C., 456, our conclusion being that the Moffat road was entitled to divisions as follows: Soft coal of all kinds except nut, slack, and pea coal, \$1.18 per ton; soft coal, nut, slack, and pea, \$1.12 per ton. The facts upon which our conclusion was based are stated in our original report and need not be repeated. We are now asked to modify our order relative to divisions as follows:

First. By providing that where the rate on slack and pea coal is the same as the rate on lump coal, that petitioner shall receive the same division on slack and pea coal as it receives on lump coal.

Second. By providing either that the divisions provided by this Commission for petitioner shall be net to this petitioner, or that if this petitioner is required to absorb the switching charge at Denver, then that the divisions to this petitioner shall not be less than the average of those divisions allowed this petitioner for the same haul by the Union Pacific and the Burlington.

The Rock Island concedes that the first prayer should be granted. We stated in our first supplemental report, moreover, that—

The ratios of the former divisions to the rates divided, if applied to the present rates on lump coal to points as far east as the Missouri River and as far south as Dwight, Kans., would give the Moffat road from \$1.21 to \$1.11 per ton, or an average of \$1.162 per ton, to 128 interstate points. The same basis would give the Moffat road from \$1.18 to \$1.03 per ton, or an average of \$1.106 per ton, on run of mine and slack to such points.

Nevertheless, we allowed the Moffat road divisions of \$1.18 per ton on lump coal and \$1.12 on slack. We are asked to modify these allowances for the reason that in some instances the rates on lump coal are the same as the rates on nut, slack, and pea coal.

No additional facts have been shown, and as no other reason than that just given appears for the changes asked, the only change necessary, and which we hereby make, is as follows:

Where the rates on nut, slack, and pea coal are the same as the rates on lump coal from Oak Hills to destinations on the line of the Rock Island in Kansas, Nebraska, and Missouri, shown in Moffat road tariff I. C. C. No. 20, the Moffat road shall be allowed a division of \$1.18 on all three kinds of coal.

The Moffat road asserts in support of its second prayer that our former report and order prescribing divisions are indefinite as to which carrier shall absorb the switching charge of 20 cents per ton at Denver. The order is silent with respect to the absorption of these charges, and in our report we left them where we found them, burdens upon the Moffat road. There was and is no necessity for making special provision with respect thereto, as the petition to have the divisions fixed avers that the Moffat road was and would be compelled to pay the intermediate charge of 20 cents per ton.

We are not convinced that the divisions which accrue to the Moffat road under contract with the Union Pacific and Burlington roads should be determinative of the divisions which the Rock Island should allow it. The other divisions were considered in our former report, their averages are not the same, and we are constrained to adhere to our former finding, except to the extent previously indicated.

A supplemental order will be entered making the modification in our former order herein found proper.

INVESTIGATION AND SUSPENSION DOCKET No. 763.
CLASSIFICATION OF CHAIN (No. 2).

Submitted June 7, 1916. Decided June 28, 1916.

Changes proposed in official classification descriptions and ratings of chains, belting, or sprocket found justified.

C. C. Hine, J. W. Allison, and A. L. Viles for respondents.
Myers & Gates for protestants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

This proceeding involves an item in official classification, filed to take effect January 1, 1916, which proposed certain changes in the descriptions and ratings of belting chains. Upon protest by the Indianapolis Chamber of Commerce the item was suspended until October 30, 1916. Manufacturers of chain located at Hartford, Conn., Worcester, Mass., and Indianapolis, Ind., also were represented at the hearing.

For some years past belting chains have been rated in official classification as follows:

	Class.	
	L. C. L.	C. L.
Iron and steel, etc.: * * * * *		
Belting, chain:		
Loose:		
Made of less than $\frac{1}{2}$ inch iron.....	3	.....
Made of $\frac{1}{2}$ inch iron or over.....	4	.....
In packages.....	4	.....
Minimum weight, 36,000 pounds.....	.....	5

Official classification No. 43, which contains the suspended item, divided iron and steel belting or sprocket chains into malleable iron chains and steel chains. A further line of cleavage was made between steel belting or sprocket chains, machine finished, and other than machine finished. The classification descriptions were thereby made

more specific, but no substantial change was made in the ratings other than that here involved. The suspended item is as follows:

	Class.	
	L. C. L.	C. L.
Chains: Belting or sprocket: • • • • • • • • Steel: Machine finished, see note, in barrels or boxes.....	2	.....
NOTE.—Rating applies on machine-finished block gear or roller chains, such as are used for power transmission on automobiles, bicycles, or machinery.		

Respondents, by tariff notation, in obedience to our order of suspension, have republished the old ratings and changed the old descriptions to read as follows:

	Class.	
	L. C. L.	C. L.
Chains: Belting or sprocket: Steel, machine finished, see note: Loose: Made of less than ½ inch steel.....	3	.....
Made of ½ inch steel or over.....	4	.....
In packages.....	4	.....
Minimum weight, 36,000 pounds.....		5
NOTE.—Rating applies on machine-finished block gear or roller chains, such as are used for power transmission on automobiles, bicycles, or machinery.		

Protestants are manufacturers of steel block and roller chains of the machine-finished type. They allege that the change from fourth to second class represents too great an increase in rates and that certain types of their steel chains compete with malleable-iron sprocket and belting chains. They admit, however, that a higher rating than fourth class properly can be applied to machine-finished steel chain.

In *Southern Classification Ratings*, 39 I. C. C., 173, and *Classification of Chain*, 39 I. C. C., 185, recently decided, similar increased ratings in southern and western classifications were approved upon records substantially like the record now before us. The active protestants in this proceeding are those who appeared in the earlier proceedings; the type of chain is the same as was involved therein; and the descriptions and ratings now in issue are identical with those previously considered. Certain minor matters are in issue here that were not in issue in the previous proceedings, but the three proceedings are substantially identical.

We find that respondents have justified the changes in the descriptions and ratings of the machine-finished steel belting or sprocket chains under consideration, and an order vacating the suspension will be entered.

No. 4521.¹
RIVERSIDE MILLS
v.
AUGUSTA & SAVANNAH STEAMBOAT COMPANY ET AL.

Submitted January 16, 1915. Decided July 6, 1916.

1. Awards of reparation do not depend upon the solvency or insolvency of the carriers concerned.
2. Reparation required in a gross sum from all the carriers defendant.

E. W. Matthews for complainants.

R. Walton Moore, Merrel P. Callaway, and M. Carter Hall for Ocean Steamship Company of Savannah.

SUPPLEMENTAL REPORT OF THE COMMISSION.

BY THE COMMISSION:

We found in our original report in these cases, Dockets No. 4521 and No. 4550, unreported, that the combination rates charged by defendants on cotton factory sweepings and cotton piece goods shipped by complainants from Augusta, Ga., to Pawtucket, R. I., and Sandersdale, Mass., during 1911, were unreasonable to the extent that they exceeded 28 cents per 100 pounds on cotton factory sweepings and 38 cents on cotton piece goods, and that reparation apparently was due on shipments made by the Riverside Mills, in the sum of \$369.69, with interest from June 26, 1911, and on shipments made by the Enterprise Manufacturing Company, in the sum of \$10.74, with interest from March 26, 1911. But as it was not proved that these parties paid and bore the charges found unreasonable we suggested that the parties supplement the record with a stipulation showing satisfactorily who did bear the charges. Complainants have since submitted affidavits showing that they are the rightful parties in interest and entitled to the reparation found due. Defendants accept these affidavits as conclusive of the facts recited.

The shipments were moved by the Augusta & Savannah Steamboat Company and the Ocean Steamship Company of Savannah to eastern ports and by rail lines beyond. It is said that the Augusta & Savannah Steamboat Company has since become insolvent and has ceased to operate, and the joint rates established over the route of movement after the shipments involved had moved have since been can-

¹ The proceeding also embraces complaint in No. 4550, *Enterprise Manufacturing Company v. August & Savannah Steamboat Company et al.*

celed. As no joint rates applied when the shipments moved and local rates were charged, the solvent defendants contend that we should not now require them to pay the total amount of reparation due. Complainants on the other hand urge that defendants are jointly and severally liable for the full amount of reparation due despite the absence of joint rates.

It is not our function to determine whether one or more of the several carriers from whom reparation is found due is solvent or insolvent. If a through rate, joint or combination, is found unreasonable and reparation is awarded the order entered runs against the carriers, collectively, that participated in the transportation. In *International Agricultural Corporation v. L. & N. R. R. Co.*, 29 I. C. C., 391-392, where there was disagreement among the carriers as to their respective proportions of the amount of reparation awarded, the Commission said:

This Commission in awarding reparation never attempts to determine in cases like this in what proportion payment should be made by the various carriers participating in the transportation. Its order is for a gross sum, and runs against all the carriers. In this case we should simply issue an order for the total amount due against all the carriers, including the Lancaster & Chester, leaving them to apportion this amount among themselves.

It may be said, however, that apparently these damages should be apportioned among the carriers upon the basis of the rate established and the divisions of that rate agreed upon among the carriers; that is, each carrier should pay such sum as the amount actually received by it exceeds the amount which would have been received had the rate fixed by the Commission been applied with the division of that rate which the carrier is now accepting.

The solvent carriers are willing to settle on this basis in so far as their respective proportions are concerned, but they ask that the order state separately the amount due from each and every carrier. We do not regard this as necessary.

We find that the complainants made the shipments involved as described in our original report and paid and bore charges thereon at the rates therein found unreasonable; that they were damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rates found reasonable; that the Riverside Mills is entitled to reparation in the sum of \$369.69, with interest, and that the Enterprise Manufacturing Company is entitled to reparation in the sum of \$10.74, with interest.

An appropriate order will be entered.

No. 5511.
MICHIGAN SEATING COMPANY
v.
GRAND TRUNK WESTERN RAILWAY COMPANY ET AL.

Submitted November 12, 1915. Decided June 28, 1916.

Rating of fiber furniture in less than carloads as provided in official classification prior to April 15, 1914, found upon rehearing not to be unreasonable, unjustly discriminatory, or unduly prejudicial when applied to shipments of fiber furniture in less than carloads from Jackson, Mich., to points in other states where rates are governed by official classification. Previous findings vacated and complaint dismissed.

Ernest L. Ewing for complainant.

Ernest S. Ballard for defendants.

Charles F. Meyler for interveners.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION :

This proceeding deals with the propriety of the official classification ratings on woven or wicker-ware furniture. We found in our original report, 29 I. C. C., 123, that the rating of three times first class, applicable to shipments of fiber furniture in less than carloads from Jackson, Mich., to points in other states where rates are governed by official classification, was unreasonable and should not exceed double first class. The carriers complied with the order that was entered, but asked for a rehearing on the ground that manufacturers of reed and grass furniture which official classification had grouped with fiber furniture in the past, at the higher rating, had protested against the lower rating prescribed for fiber furniture and desired an opportunity to intervene and offer testimony. Prior to April 15, 1914, official classification provided a less-than-carload rating of three times first class on various specified articles of bamboo, fiber, grass, rattan, reed, or willow furniture, all properly known as woven or wicker-ware furniture. The carload rating was and is second class, minimum 10,000 pounds, but is not under attack, as less than 10 per cent of the entire movement is in carloads. The case was reopened for further hearing December 21, 1914, whereupon the Murphy Chair Company and the Heywood Brothers and Wakefield Company, corporations engaged in the manufacture of reed furni-

ture at Detroit, Mich., Chicago, Ill., Gardner and Wakefield, Mass., intervened. Additional evidence has been taken and the case is now before us on the more comprehensive record thus made.

It is unnecessary to repeat what was said in our former report, or to detail the conflicting contentions of complainant, interveners, and defendants. As matters now stand the proceeding is virtually a new one and should be dealt with on that basis. We may observe, however, that interveners express satisfaction with the present rating of three times first class as applied to reed furniture, but object strongly to a lower rating for fiber furniture.

Furniture which can properly be described as made of bamboo, rattan, or willow constitutes but a small part of the total production of woven furniture, and does not call for particular description. Reed, fiber, and grass are the principal materials now used, about 60 per cent of all woven ware furniture being made of reed, about 30 per cent of fiber. Reed is obtained from rattan after the outer bark has been stripped to get the cane used for seating chairs, the outer segments of the remaining rattan making the flat or slab reed and the center portion the round reed here considered. Fiber is merely a strong paper twisted or braided to form a thick strand. The grass used consists of certain grasses wound and tied with twine to bind them together. All woven, or wicker, furniture consists of a hardwood frame, upon and between the parts of which reed, fiber, or grass is wound, woven, or plaited. The hardwoods ordinarily used for the frames are maple, oak, hickory, ash, or elm.

The essential difference between fiber furniture and either reed or grass furniture is that the fiber used is loaded with glue or other sizing material. The furniture covered with fiber is immersed in a tank containing size and left there until the paper is thoroughly saturated. The glue dries in the fiber and adds approximately 3.5 per cent to the total weight of the finished article. Reed, fiber, and grass furniture may be stained. Reed furniture may be varnished, but fiber furniture must be varnished to cover the glue or sizing. Varnishing adds approximately 4.5 per cent to the weight of fiber furniture.

The record is overburdened with testimony concerning the relative weight per cubic foot, value, and liability to damage in transit, of finished articles of reed and fiber furniture wrapped or packed for shipment. It appears that all varieties of woven furniture are highly competitive and that they have more points of likeness than of difference. Fiber furniture weighs a little more than reed furniture of the same pattern and cubic dimensions. It also costs something more to make than reed furniture and sells at a little higher price. The evidence is unsatisfactory with respect to the relative liability of the different articles to damage in transit, but shows that

all woven or wicker furniture is extremely liable to injury and that damage claims paid to complainant have amounted at times to more than 6 per cent of the freight revenue on the shipments.

Complainant segregated certain of the articles which it makes and endeavored by means of comparisons with the weights and values of certain articles of wooden furniture, upholstered and unupholstered, to show that one and one-half times first class would be a reasonable rating for a portion of its fiber furniture. The evidence shows, however, that the tendency for all forms and varieties of woven furniture is toward greater weight, greater solidity in appearance and structure, and the more frequent use of upholstery.

Woven or wicker furniture competes with all other furniture. But the keenest competition which reed or fiber furniture must meet is afforded by furniture of the woven or wicker furniture category. Speaking generally, woven furniture is properly classed with light and bulky articles, and in our opinion the differences between furniture made of reed, fiber, grass, or other wicker ware, whether of weight, value, or liability to damage, are not sufficiently marked to warrant a difference in classification rating.

We referred in our original report to the fact that a double first-class rating applied on fiber furniture in western classification territory, although not specifically. Prior to January, 1912, the same rating of three times first class was applied to shipments of fiber furniture in western classification territory as to shipments of rattan, reed, and willow furniture. At that time the Western Classification Committee ruled at complainant's request that fiber furniture should take the rating applied to furniture not otherwise indexed by name, which was and is double first class. This action was an interpretation of the classification rather than a determination after full investigation.

We find, contrary to our original findings, that the official classification rating of fiber furniture in less than carloads prior to April 15, 1914, the effective date of our original order herein, was not and will not be unreasonable, unjustly discriminatory, or unduly prejudicial when applied to shipments of fiber furniture in less than carloads from Jackson, Mich., to points in other states, where rates are governed by official classification.

An order dismissing the complaint will be entered.

40 I. C. C.

No. 6445.
JULIUS FRIEDLAENDER & COMPANY
v.
CENTRAL OF GEORGIA RAILWAY COMPANY ET AL.

Submitted March 20, 1916. Decided June 28, 1916.

Original decision that complainant had not proved damage on account of an unduly prejudicial class A rate of 32 cents on paper stock from Columbus, Ga., to Cincinnati and Lockland, Ohio, affirmed.

S. A. Spivey for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

The complainant alleged that the carload rate charged by defendants for the transportation of certain shipments of paper stock consisting of refuse jute and cotton, mixed, and scrap bagging, from Columbus, Ga., to Cincinnati and Lockland, Ohio, was unduly prejudicial and asked for reparation and the establishment of a just rate for the future. We found that the rate attacked was unduly prejudicial to the extent that it exceeded by more than 2 cents per 100 pounds the rate contemporaneously applicable from Augusta, Ga., to Cincinnati and Lockland, but that it was not established that complainant had suffered damage by reason of the discrimination. The claim for reparation accordingly was denied. Complainant asked to have the case reopened and reconsidered, and as it appeared from its petition then filed that an opportunity was sought to introduce further testimony relative to the claim for reparation, further hearing was granted. No evidence was adduced on rehearing which would warrant any change in our original finding, which we accordingly affirm.

No. 5781.
GEORGE H. LEE COMPANY
v.
CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
COMPANY ET AL.

Submitted April 29, 1916. Decided June 29, 1916.

Reparation awarded on shipments of creosote oil in carloads from Moline, Ill., to Omaha, Nebr.

E. J. McVann for complainant and intervener.

W. F. Dickinson for Chicago, Rock Island & Pacific Railway Company.

R. B. Scott and *K. F. Burgess* for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

In our original decision in this case, unreported, we found that the rate of 22 cents per 100 pounds charged by defendants for the transportation of creosote oil, in steel drums, carloads, from Moline, Ill., to Omaha, Nebr., was unreasonable, and prescribed a rate of 16.5 cents for the future. We also found that the rate charged was in excess of aggregates of intermediate rates contemporaneously in effect over the routes of movement, that the discrepancies were not protected by fourth section applications, and that the rate charged therefore was unlawful. Reparation was found to be due on the basis of the lowest aggregates of intermediate rates. The parties were unable to agree as to the intermediate rates upon which reparation should be awarded, and the case has been reheard for the purpose of settling the question.

We find that the lowest combination rate in effect over the Chicago, Rock Island & Pacific prior to October 1, 1911, was 20 cents: 2.5 cents from Moline to Davenport, Iowa; 13.5 cents from Davenport to Council Bluffs; 4 cents from Council Bluffs to Omaha. On and after October 1, 1911, the lowest combination rate was 16.4 cents: 8.7 cents from Moline to Valley Junction, Iowa; 7.7 cents from Valley Junction to Omaha. The shipments over the Chicago, Burlington & Quincy moved through Plattsmouth, Nebr., and the 22-cent through rate charged was less than the lowest combination. No com-

bination rate over the Chicago, Milwaukee & St. Paul was lower than the through rate.

We find that the rate charged was unreasonable and unlawful to the extent that it exceeded 20 cents per 100 pounds on shipments moving over the Chicago, Rock Island & Pacific prior to October 1, 1911, and 16.4 cents on shipments moving on or after October 1, 1911. We further find that complainant and intervener have been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rates herein found lawful; and that they are entitled to reparation, with interest.

Complainant and intervener should prepare statements showing as to each shipment on which reparation is claimed the date of movement, point of origin, point of destination, route, weight, car number and initials, rate applied, charges collected and date of payment, and the amount of reparation due under our findings herein, which statements should be submitted to defendant, Chicago, Rock Island & Pacific Railway Company, for verification. Upon receipt of statements so prepared by complainant and intervener and verified by defendant, we will consider further entering an order awarding reparation.

Our previous findings are hereby vacated to the extent that they conflict with the present findings.

40 I. C. C.

MORGANTOWN & KINGWOOD DIVISIONS.¹

Submitted August 4, 1915. Decided June 28, 1916.

1. The Commission has no authority, under section 15 of the act, to prescribe the divisions of joint through rates except when the joint rates have been previously fixed by the Commission under its order and the parties thereto are in disagreement.
2. Contention of the Morgantown & Kingwood Railroad that the Commission fixed its joint rates in *The Five Per Cent Case*, and thus laid a foundation for prescribing the divisions of such rates, not sustained.

William E. Lamb, George F. Snyder, and Cassoday, Butler, Lamb & Foster for complainant.

W. A. Parker, S. C. Pratt, and William L. Kinter for Baltimore & Ohio Railroad Company and other defendants.

F. H. Moser for Lehigh Valley Railroad Company.

E. B. Crosley for Philadelphia & Reading Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The Morgantown & Kingwood Railroad Company operates a line wholly within the state of West Virginia, extending from Morgantown on the west to Morgantown & Kingwood Junction on the east, a distance of approximately 49 miles. It connects at each end with the Baltimore & Ohio Railroad, and, under joint rates with that road and its connections, is engaged in the carriage of passengers and property between interstate points.

By what it terms a supplemental complaint in these proceedings, otherwise known as *The Five Per Cent Case*, 31 I. C. C., 351; 32 I. C. C., 325, the Morgantown & Kingwood alleges an inability on the part of itself and its connections longer to agree upon the divisions of their joint rates and asks that the rates may be apportioned among them by us on a just and reasonable basis. The defendants contend that we have jurisdiction to fix divisions only when the joint rates have been prescribed by us, which they say is not the case here.

The provision of the act respecting divisions is found in section 15. The text of the section immediately preceding the particular language in question reads as follows:

All orders of the Commission, except orders for the payment of money, shall take effect within such reasonable time, not less than 30 days, and shall continue in force

¹ The proceeding embraces No. 5860, Revenues of Rail Carriers in Official Classification Territory; and Investigation and Suspension Docket No. 333, Rate increases in Official Classification Territory.

for such period of time, not exceeding two years, as shall be prescribed in the order of the Commission, unless the same shall be suspended or modified or set aside by the Commission, or be suspended or set aside by a court of competent jurisdiction.

That language is a part of the general authority under which the Commission, after a full hearing upon formal complaint or upon its own initiative, is constantly determining whether the rates or practices of carriers are reasonable and otherwise lawful, and if not, what will be a just and reasonable rate or practice for the future. Immediately following it is the provision in which the Commission is granted authority to examine and fix the divisions of joint through rates. It reads as follows:

Whenever the carrier or carriers, in obedience to such order of the Commission or otherwise, in respect to joint rates, fares, or charges, shall fail to agree among themselves upon the apportionment or division thereof the Commission may, after hearing, make a supplemental order prescribing the just and reasonable proportion of such joint rate to be received by each carrier party thereto, which order shall take effect as a part of the original order.

The provision dates back to the time when the Commission, under section 15 of the original act, had no authority to deal with rates except upon formal complaint. It now constitutes a part of that section, as amended, which gives us power to require, after hearing either upon formal complaint or in a proceeding instituted on our own motion, the establishment and maintenance of joint rates lower than the aggregate of the intermediate rates or joint rates already in effect, or proposed by the carriers in tariffs under suspension. It does not come into play until, as a condition precedent, the Commission has made some requirement after full hearing. The reason therefor, as we understand it, is to provide a means of determining which carrier, or to what extent each carrier, shall bear an enforced reduction or participate in an approved increase in the existing or proposed through charge. In other words, the Commission, in creating a joint rate or in reducing a joint rate below what had been established voluntarily or is proposed by the carriers, having brought about a situation different from that as to which their agreement applied and not in contemplation when the agreement was made, is to have the power to complete what it has undertaken, in case the carriers themselves do not find it possible to agree upon the divisions of the new rate.

But the Morgantown & Kingwood contends that the Commission has jurisdiction to fix divisions in this case because all of its joint rates were involved in *The Five Per Cent Case*. It was upon this theory that it filed its petition as a supplemental complaint in that case.

The Morgantown & Kingwood says that the Commission, in granting the increases, must be assumed to have found that the increased rates permitted were reasonable; also that it must be as-

sumed that increased rates were *prescribed* as reasonable because the Commission said, in limitation, that they should not exceed the current rates by more than 5 per cent. Whether this limitation applied to the Morgantown & Kingwood's joint rates is not clear, as it is not shown that any of the rates of that road were proposed to be increased more than 5 per cent.

With respect to the lake-and-rail rates and the rates on coal, coke, and iron ore, the Morgantown & Kingwood also says that the Commission found the rates then in effect to be just and reasonable, because, in its opinion and order, it refused to permit any increases whatever therein.

It is sufficient to say, in answer to the foregoing contentions, that we did not require the maintenance of any rates for the future. Moreover, regardless of what was said respecting the allowance of the increases in some cases and the denial thereof in others, the further fact remains that we were dealing with the whole body of rates in official classification territory. We were looking at the general level of all rates, and the propriety of the joint rates of the Morgantown & Kingwood was not the subject of particular investigation and consideration. The rates the divisions of which we are here asked to prescribe were not before us in the sense that their individual reasonableness was involved.

Since the increases made as a result of the authority granted in *The Five Per Cent Case*, there have been additional increases in various rates in official classification territory which have been before us and approved. The maintenance of the joint rates of the Morgantown & Kingwood here involved was not specifically required in *The Five Per Cent Case* within the meaning of section 15 of the act, and we can not proceed to the fixing of the divisions thereof.

The divisions accorded the Morgantown & Kingwood are not as great as are allowed by defendant to certain other carriers for similar hauls. It is contended that the Commission has power to remove this discrimination. The answer to this is that if a carrier can make a better bargain with one connection than with another it may do so, and it is not for this Commission to equalize the results.

It is to be understood that what we have herein held as to our authority over divisions has no application where, as in industrial railway cases, we may, under other sections of the act, examine and prescribe divisions, in order to prevent excessive allowances in the nature of rebates which result in unjust discrimination in favor of and against shippers. *O'Keefe v. United States*, 240 U. S., 294.

An order will be entered dismissing the complaint.

MEYER, *Chairman*, and HARLAN, *Commissioner*, dissent.
40 L. C. C.

No. 7803.
TOWN OF TORRINGTON, WYO.,
v.
CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY.

Submitted January 14, 1916. Decided June 22, 1916.

Rates on live stock in carloads from Torrington, Wyo., to Omaha, Nebr., and on oil, less than carloads, from Omaha to Torrington not shown to be unreasonable but held to be unduly prejudicial.

Charles E. Cotterill and Charles E. Lane for complainant.
K. F. Burgess and R. B. Scott for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a municipality of the state of Wyoming. By complaint, filed March 4, 1915, for the benefit of its inhabitants, it alleges that defendant's class rates from Omaha, Nebr., to Torrington, commodity rates on live stock in carloads and on oil in less than carloads from and to the same points, and class rates from Chicago, Ill., to Torrington, are unreasonable and unjustly discriminatory against Torrington and unduly preferential of Henry, Nebr. The establishment of reasonable and nondiscriminatory rates for the future is asked.

The complaint was amended after hearing so as to put in issue the rates on live stock from Torrington to Omaha instead of the rates from Omaha to Torrington and the amended complaint was submitted on the evidence previously adduced. Reductions in the class rates assailed also were made after the hearing and an adjustment effected which is satisfactory to complainant. The evidence will not permit any finding with respect to this adjustment and the rates attacked on live stock from Torrington to Omaha and on oil from Omaha to Torrington are the only rates requiring further consideration.

Torrington is a town of about 500 inhabitants in southeastern Wyoming. Henry is a town of about 50 inhabitants just across the state line in southwestern Nebraska. Both towns are on a branch line of defendant that extends northwesterly from Northport, Nebr. They are 8 miles apart and approximately 500 miles from Omaha

and 1,000 miles from Chicago. They have equal natural advantages and compete in the same general lines of business and in the same territory. The disparity in the rates on live stock outbound and on oil inbound is as follows, rates stated in cents per 100 pounds except as noted:

From—	Cattle.	Hogs.	Sheep, d. d.	Horses, per car.	Oil, l. c. l.
Torrington.....	31.0	33.0	31.0	\$72.00	¹ 102.0
Henry.....	24.65	33.15	23.65	59.50	² 58.8
Difference.....	6.35	4.85	7.35	12.50	43.2

¹ To Torrington.

² To Henry.

Complainant’s witnesses stated that Torrington traffic was shipped to Henry and carted to Torrington, and that during 1914, 99 carloads of cattle were driven from Torrington to Henry for shipment; also that the largest stock feeder had abandoned his Torrington plant and had moved away but would return if the rates should be properly adjusted. There is practically no evidence that the rates to and from Torrington are unreasonable.

Defendant contends that the Torrington rates are in line with other interstate rates in the same general territory and that they are reasonable. It concedes that the spread between Torrington and Henry should not exceed the customary inconsiderable spread between stations so close together, and that possibly it should not exceed 1 cent per 100 pounds on live stock, but argues against being required to gauge its interstate rates to and from Torrington by low intrastate commodity rates to and from Henry, forced upon it by the Nebraska commission. Shipments of horses, Torrington to Omaha, are shown to earn 14 cents per car-mile and 5.41 mills per gross-ton mile; shipments of cattle, 13.3 cents per car-mile and 5.11 mills per gross ton-mile; shipments of hogs, 12.6 cents per car-mile and 5.37 mills per gross ton-mile; shipments of sheep, 13.3 cents per car-mile and 5.11 mills per gross ton-mile. Defendant’s system earnings on live stock for the year ended June 30, 1914, averaged 5.42 mills per gross ton-mile. Rates prescribed by this Commission on live stock from New Mexico, Texas, and Oklahoma are cited, together with many rates on live stock in western territory which are said not to be less than the rates assailed, distance considered.

We find that the rates assailed on horses, cattle, hogs, and sheep are not shown to be unreasonable, but that they are unduly prejudicial in comparison with the rates from Henry, and that for the future defendant’s rates on horses, cattle, hogs, and sheep from Torrington to Omaha should not exceed the rates contemporaneously applicable over its line from Henry by more than 1 cent per 100 pounds, which

is the present difference between the class rates to the two points on classes A, B, C, and E.

The western classification rates oil in less than carloads third class. The rates on oil in less than carloads from Omaha originally were \$1 per 100 pounds to Henry and \$1.02 to Torrington. The Nebraska commission reduced the less carload rate from Omaha to Henry to 70 per cent of fourth class. Defendant states that the carriers have never applied less than third-class rates to less carload shipments elsewhere; that no other state commission has classified oil as low as the Nebraska commission; and that a petition for relief is now pending before the Nebraska commission.

We find that the less-than-carload rate on oil from Omaha to Torrington is unduly prejudicial, that the rates on this commodity from Omaha to Torrington and Henry should reflect the third-class rate adjustment, and that defendant's rates on oil from Omaha to Torrington should not exceed the rates contemporaneously applicable from Omaha to Henry by more than 2 cents per 100 pounds, which is the present difference between the class rates for the third and fourth classes.

An appropriate order will be entered.

40 I. C. C.

No. 5862.
LENA LUMBER COMPANY
v.
**CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
COMPANY.**

Submitted January 19, 1914. Decided June 28, 1916.

Rate of 14 cents per 100 pounds charged for the transportation of a carload of yellow-pine lumber from Benton, Ark., to Memphis, Tenn., not found unreasonable or unduly prejudicial in comparison with the 10-cent rate contemporaneously in effect from Little Rock, Ark., to Memphis, Tenn. Complaint dismissed.

W. L. Lewis and R. P. Allen for complainant.
George E. Schnitzer for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business, with its principal office at Silica, Ark. By complaint, filed June 16, 1913, it alleges that the rate charged by defendant for the transportation of a carload of yellow-pine lumber from Benton, Ark., to Memphis, Tenn., was unreasonable and unjustly discriminatory. Reparation is asked and the establishment of a reasonable rate for the future.

The shipment weighed 36,000 pounds and was shipped by complainant from Lena, Ark., for which Benton is the billing station, on March 27, 1913, consigned to the St. Louis & San Francisco Railroad at Memphis. Charges were paid by complainant in the sum of \$50.40, at a rate of 14 cents per 100 pounds from Benton to Memphis. Complainant contends that the rate charged from Benton to Memphis was unreasonable and unjustly discriminatory to the extent that it exceeded 11 cents per 100 pounds. The principal evidence against the rate assailed is a rate of 10 cents per 100 pounds that applied from Little Rock, Ark., to Memphis, the latter being 133 miles from Little Rock and 158 miles from Benton. Complainant contends that the rate from Benton should not have exceeded and should not exceed the rate from Little Rock by more than 1 cent per 100 pounds.

The rates on bauxite ore from Benton and Little Rock to Memphis were the same, while in *Sawyer & Austin Lumber Co. v. St. L., I.*

M. & S. Ry. Co., 21 I. C. C., 464, a rate of 11 cents per 100 pounds was prescribed on pine lumber from Pine Bluff, Ark., to Memphis, 191 miles. But bauxite ore is the only commodity on which the rates from Benton and Little Rock to Memphis are the same; generally the rates from Benton to Memphis are higher than the rates from Little Rock. Defendant offered no testimony, resting upon the record in *Wisconsin & Arkansas Lumber Co. v. St. L., I. M. & S. Ry. Co.*, 33 I. C. C., 33, which was then pending.

Benton is located in the southwestern yellow-pine blanket, which is bounded on the north by the Arkansas River, on the east by the Mississippi River, on the south by the Gulf of Mexico, and on the west by a line drawn through Kansas City, Mo., and Houston, Tex., from which a rate of 14 cents has long applied to Memphis on pine lumber. The rates on pine lumber from the northern part of the blanket were assailed in *Wisconsin & Arkansas Lumber Co. v. St. L., I. M. & S. Ry. Co.*, *supra*, but were not found to be unreasonable or unduly prejudicial in comparison with the rates from the southern part of the blanket. In *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.*, 39 I. C. C., 303, the rates on yellow-pine lumber from all points in Arkansas on the Chicago, Rock Island & Pacific Railway to Memphis were attacked, among others. We found that the rates assailed were not unreasonable, but that they were unjustly discriminatory to the extent that they exceeded by more than 1 cent per 100 pounds the rates contemporaneously maintained by defendant for the transportation of the same commodity for like distances between points in Arkansas, and required defendant to remove the discrimination.

The evidence in the instant case is insufficient to justify a finding that the rate complained of is unduly prejudicial as compared with the lower rate from Little Rock, or that it is intrinsically unreasonable, and in view of our findings in the *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.*, *supra*, the complaint will be dismissed.

40 I. C. C.

No. 5893.¹
INLAND SEED COMPANY
v.
OREGON-WASHINGTON RAILROAD & NAVIGATION
COMPANY ET AL.

Submitted December 11, 1915. Decided June 28, 1916.

1. Reparation denied on shipments which moved from eastern defined territories to points intermediate to Pacific coast terminals previous to the adjustment of the rates that followed the *Intermountain Cases; Railroad Commission of Nevada v. S. P. Co.*, 21 I. C. C., 329; and *City of Spokane v. N. P. Ry. Co.*, 21 I. C. C., 400; affirmed in *Intermountain Rates Cases*, 234 U. S., 476.
2. Double first-class rate charged on less-than-carload shipments of mimeographs and addressing machines from Chicago, Ill., to Spokane, Wash., found to have been unreasonable to the extent that it exceeded one and one-half times the first-class rate contemporaneously in effect. Reparation awarded.

H. M. Stephens, James P. Dillard, and Lloyd E. Gandy for Inland Seed Company, American Type Founders Company, Cohn Brothers, Langert Wine Company, United Iron Works, John W. Graham & Company, and Inland Empire Biscuit Company.

O. W. Tong for Yegen Brothers, Billings Hardware Company, and Malin-Yates Company.

Maurice Weigle for Swift & Company.

G. M. Stephen for Chicago House Wrecking Company.

F. H. Curran for Berry Coal & Coke Company.

Jay W. McCune for F. S. Harmon & Company.

Charles Donnelly, Fred H. Wood, E. C. Lindley, H. A. Scandrett, T. J. Norton, John F. Finerty, jr., R. B. Scott, A. C. Spencer, W. S. Gilbert, F. D. Allen, A. P. Humburg, J. H. Rees, H. E. Still, A. F. Cleveland, and R. C. Sanders for defendants.

¹ The proceeding also embraces complaints in—No. 6253, American Type Founders Company v. Northern Pacific Railway Company et al.; No. 6314, Cohn Brothers v. Northern Pacific Railway Company et al.; No. 6316, Langert Wine Company v. Northern Pacific Railway Company et al.; No. 6342, United Iron Works v. Northern Pacific Railway Company et al.; No. 6732, John W. Graham & Company v. Spokane International Railway Company et al.; No. 5206, Yegen Brothers v. Chicago, Burlington & Quincy Railroad Company et al.; No. 5206 (Sub-No. 1), Billings Hardware Company v. Chicago, Burlington & Quincy Railroad Company et al.; No. 5206 (Sub-No. 2), Malin-Yates Company v. Chicago Great Western Railroad Company et al.; No. 6164, Swift & Company v. Atchison, Topeka & Santa Fe Railway Company et al.; No. 6164 (Sub-No. 1), Swift & Company v. Texas & Pacific Railway Company et al.; No. 7246, Chicago House Wrecking Company v. Chicago, Rock Island & Pacific Railway Company et al.; No. 7395, Berry Coal & Coke Company v. Chicago & North Western Railway Company et al.; No. 7395 (Sub-No. 1), Berry Coal & Coke Company v. Atchison, Topeka & Santa Fe Railway Company; No. 6734, F. S. Harmon & Company v. Northern Pacific Railway Company et al.; and No. 6774, Inland Empire Biscuit Company v. Great Northern Railway Company et al.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

These cases involve claims for reparation on shipments from eastern defined territories to certain points intermediate to Pacific coast terminals, based on our decisions in *City of Spokane v. N. P. Ry. Co.*, 15 I. C. C., 376, 19 I. C. C., 162, 21 I. C. C., 400, and *Railroad Commission of Nevada v. S. P. Co.*, 21 I. C. C., 329, commonly known as the *Intermountain Cases*.

An order was entered in the original *Spokane Case*, 15 I. C. C., 376, effective May 1, 1909, prescribing class rates and certain commodity rates which we deemed reasonable from St. Paul, Minn., and Chicago, Ill., to Spokane. We realized, however, that the reductions ordered would necessitate a widespread readjustment of rates to all intermediate territory and accordingly suggested that possibly some scheme might be devised by the carriers which could be applied not only to Spokane but to other points as well. The carriers asked for additional time in which to prepare a plan of this character and were granted it except as to the class rates prescribed which were published. Later in May, 1909, the carriers proffered a schedule of commodity rates from various eastern points of origin to Spokane with a request for permission to establish such rates and the dismissal of the *Spokane Case*. The proposed schedules were vigorously protested by Spokane shippers and by interveners representing Pacific coast terminals.

On June 9, 1909, the city of Spokane filed a supplemental complaint, putting in issue, among other matters, the balance of the commodity schedules from eastern points to Spokane and asking for joint rates from points east of Chicago to Spokane on both class and commodity traffic. On June 7, 1910, a supplemental order was entered in the *Spokane Case, supra*, prescribing reasonable class and commodity rates from eastern defined territories to Spokane and Spokane territory, 19 I. C. C., 162. Reports also were rendered at about the same time in *Railroad Commission of Nevada v. S. P. Co.*, 19 I. C. C., 238, and *Maricopa County Commercial Club v. S. F., P. & P. Ry. Co.*, 19 I. C. C., 257, in which we held that the class rates from eastern defined territories to points in Nevada and Arizona were unreasonable and prescribed a reasonable basis of class rates. The establishment of commodity rates was postponed in each case pending an investigation into the effect of their establishment upon the revenues of the carriers. Before the result of this investigation was known the fourth section of the act was amended, whereupon applications were filed by various transcontinental carriers for relief from the provisions of the fourth section as to rates from eastern defined territories to Pacific coast terminals and intermediate points.

In reports dated June 22, 1911, dealing with the situation presented by the cases cited and the carriers' fourth section applications, we denied authority to the carriers to make lower commodity rates from the Missouri River points to Pacific coast terminals than to intermediate points, but authorized the maintenance of rates to intermediate points 7 per cent higher than the rates to Pacific coast terminals on traffic originating in Chicago territory, 15 per cent higher on traffic from Buffalo-Pittsburgh territory, and 25 per cent higher on traffic from New York territory, 21 I. C. C., 329 and 400. No commodity rates were established to Nevada and Arizona points and the rates previously found reasonable to Spokane territory were left for adjustment pursuant to our fourth section orders. An appeal was taken from our orders to the Commerce Court, which set them aside on November 9, 1911, *A., T. & S. F. Ry. Co. v. U. S.*, 191 Fed., 856. An appeal from the order of the Commerce Court was taken to the Supreme Court of the United States, which reversed the action of the Commerce Court on June 22, 1914, *Intermountain Rate Cases*, 234 U. S., 476. In May, 1912, while the cases were pending in the Supreme Court, we called upon the carriers to show cause why the commodity rates found reasonable to Spokane in our decision of June 7, 1910, together with commodity rates complementing the class rates previously instituted to Nevada and Arizona should not be ordered established.

The carriers presented proposed schedules of commodity rates to the intermountain territory, the rates proposed to Spokane being satisfactory to complainants, though generally higher than the rates prescribed in our previous order of June 7, 1910. The discontinuance of the *Spokane Case* was asked. The carriers stated at the time that the proposed rates to Nevada and Arizona were not presented as reasonable, but merely to relieve an embarrassing situation. The complainants in the *Nevada Railroad Commission* and *Maricopa County Commercial Club Cases*, *supra*, would not agree that the rates offered met their full demand, but submitted to us the question of the advisability of such rates going into effect. On May 14 and May 15, 1912, we gave permission to the carriers to institute the proposed rates pending the decision of the Supreme Court in the *Intermountain Rate Cases*, but without passing upon the reasonableness of the rates. We refused to discontinue the *Spokane Case*. The same basis was shortly afterwards established to intermountain territory.

The complaints in Nos. 5893, 6253, 6314, 6316, 6342, and 6732, which were filed on various dates between November 30, 1911, and November 15, 1913, involve shipments of various commodities from points in eastern defined territories to Spokane, which moved during

the period from October 10, 1911, to November 23, 1912. Reparation is asked in all of them on the ground that the rates charged exceeded the rates found reasonable in *City of Spokane v. N. P. Ry. Co.*, 19 I. C. C., 162. The complaints in No. 5206 and No. 5206 (Sub-Nos. 1 and 2) involve the rates charged prior to July 22, 1912, on various shipments to Billings, Mont., from points farther east.

The Billings Chamber of Commerce, of Billings, Mont., filed a complaint in August, 1909, against practically all of the class and commodity rates to Billings from points east thereof, which complaint also concluded with a prayer for reparation. This case, No. 2775, will hereinafter be termed the *Billings Case*. The *Spokane Case* was pending before us at the time this complaint was filed, and as the parties to the two cases realized that the issues presented were closely related, agreed to the suspension of the proceedings in the former case until the latter should be settled. The defendants also agreed that after the *Spokane Case* should be decided by us, or after any readjustment of the rates involved therein should be made, they would establish commodity rates to Billings from the east which would bear a reasonable relation to the rates to Spokane. The compromise rates previously mentioned that were established to points intermediate to Pacific coast terminals were applied to Billings and were satisfactory to the Billings Chamber of Commerce, which moved to have its case dismissed without prejudice. An order to that effect was entered on June 10, 1912. The cases now before us were instituted in September and October, 1912.

Complainants take the position that defendants should have reduced their rates to Billings immediately after our decision of June 7, 1910, in the *Spokane Case*, and ask reparation on shipments which moved two years prior to the filing of the complaint. They contend that if the rates to Spokane were unreasonable, the rates to Billings, 300 miles east of Spokane, which are related to the Spokane rates, also were unreasonable. In support of this contention they show that the ton-mile earnings of the rates charged from Chicago and St. Paul to Billings exceeded the ton-mile earnings of the rates to less distant points in North Dakota and South Dakota.

The complaints in Nos. 6164, 6164 (Sub-No. 1), 7246, 7395, and 7395 (Sub-No. 1) involve various shipments which moved between June 16, 1912, and July 29, 1914, to points intermediate to north Pacific and California terminals. The claims in these cases assume that the rates charged to intermediate points which were higher than the basis prescribed in *City of Spokane v. N. P. Ry. Co.*, 21 I. C. C., 400, and *Railroad Commission of Nevada v. S. P. Co.*, 21 I. C. C., 329, were unlawful and unreasonable to the extent that they exceeded rates made on the basis prescribed. Most of the shipments consisted

of soap in carloads, coal in carloads, and iron articles in less than carloads, which articles are included in a list of commodities known as schedule C commodities, for which a proper basis of rates from eastern defined territories to Pacific coast terminals and intermediate points was not prescribed until our decision in *Commodity Rates to Pacific Coast Terminals and Intermediate Points*, 34 I. C. C., 13, on April 30, 1915.

The present rates from and to the points involved are adjusted in compliance with our fourth section orders and in many cases exceed the rates which were applicable at the time the shipments in controversy moved. The rates found reasonable in the *Spokane Case* were never actually required to be established and never were established by the carriers except perhaps to the extent that they were found necessary in the readjustment of rates throughout the west following our decisions on the carriers' fourth section applications. We said in the *Spokane Case*, 21 I. C. C., at page 427, that—

We do not think that any further order should be made for the present in this case. It may be asked why the schedule of rates suggested by the Commission as reasonable should not be ordered in. The answer is that carriers should be permitted in so far as possible to adjust their own tariffs and that it seems probable that in compliance with this order carriers must establish rates in substantial accord with those suggested by us. It should be ever borne in mind that the acute complaint in this case is the discrimination and not the unreasonable rate. Obedience to this order will doubtless result in some rates from the east which are higher and in others which are lower than those suggested by the Commission, since we did not then feel at liberty, as the complainants requested, to make the Spokane rate depend upon the coast rate. But it is likely that the resulting schedule will be more satisfactory to the complainants and no more burdensome upon the defendants. If the carriers establish under this disposition of the case rates to Spokane which are excessive, a further order can be made in this proceeding reducing them to a proper basis.

The primary cause of complaint with respect to the rates in this territory is that they exceeded the Pacific coast rates. A question of discrimination, accordingly, is presented rather than a question relative to the reasonableness of the rates. It is significant, therefore, that none of the complainants is shown to have sustained any damage by reason of the lower rates applicable to the coast. Furthermore, neither the voluntary reductions of the rates by carriers nor compulsory reductions necessarily entitle shippers at the unreduced rates to reparation. Reparation has frequently been denied when the rates reduced have been in effect for long periods and when our orders requiring reductions involved readjustments of rates throughout a large territory and affected shippers at many points who were not parties to the proceedings. We accordingly find that no reparation should be awarded in these cases, based upon our findings in the *Intermountain Cases*, *supra*.

The record in No. 6732 shows that John W. Graham & Company, a corporation engaged in the stationery business at Spokane, made a number of less-than-carload shipments of letter duplicators or mimeographs and addressing machines from Chicago to Spokane during the period from December 28, 1911, to July 12, 1912. The complaint was not filed until March 16, 1914, but the claims for reparation which it contains were presented to the Commission informally September 2, 1913. The shipments aggregated 2,234 pounds and charges were collected in the total sum of \$128.56. The rate legally applicable was the double first-class rate of \$5.80 per 100 pounds, and the shipments were undercharged \$1.01. After the shipments had moved the western classification rating which governed was reduced to one and one-half times first class. Complainant contends that the charges collected were unreasonable to the extent that they exceeded the charges that would have accrued at one and one-half times the first-class rate.

The rating applied on this traffic in western classification territory has been considered several times, *Pacific Stationery & Printing Co. v. O.-W. R. R. & Nav. Co.*, 24 I. C. C., 299; *J. K. Gill Company*, Docket No. 5520, unreported, and following these cases we find that the rate charged was unreasonable to the extent that it exceeded one and one-half times the first-class rate contemporaneously in effect, or \$4.35 per 100 pounds. We further find that complainant made the shipments as described and paid and bore charges thereon at the rate herein found to have been unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$31.38, with interest. The undercharge found outstanding may be waived.

The complaints in Dockets Nos. 6734 and 6774, respectively, involved the rates on a carload shipment of desks from High Point, N. C., to Spokane, and on two less-than-carload shipments of candy cough drops from Poughkeepsie, N. Y., to Spokane. Both complaints were dismissed after hearing on December 22, 1914. They were assigned for argument on the question of reparation with the other cases involved, but in view of the conclusions reached herein with respect to reparation the dismissal orders previously entered will be allowed to stand.

All of the complaints will be dismissed except the complaint in No. 6732, upon which an order awarding reparation will be entered.

40 I. C. C.

No. 6688.
OMAHA GRAIN EXCHANGE
v.
CHICAGO & ALTON RAILROAD COMPANY ET AL.

Submitted April 1, 1916. Decided June 28, 1916.

Following original report, reparation awarded on carload shipments of corn and oats from Omaha and South Omaha, Nebr., and Council Bluffs, Iowa, to Auxvasse, McCredie, Fulton, and New Bloomfield, Mo.

Edward P. Smith for complainant.

George M. Entrikin for Wabash Railroad Company and its receivers.

SUPPLEMENTAL REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complaint herein sought the establishment of joint reshipping carload rates over the Wabash Railroad, in connection with the Chicago & Alton Railroad, on wheat, corn, and articles taking the same rates, from Omaha and South Omaha, Nebr., and Council Bluffs, Iowa, by way of Mexico, Mo., to certain stations on the main line of the Chicago & Alton Railroad and to all south branch stations on the Chicago & Alton from Mexico to the Missouri River. Before the complaint was heard defendants published joint rates on corn and articles taking the same rates, including oats, from Omaha through Mexico to these south branch points, as follows: Auxvasse, 11 cents; McCredie and Fulton, 11½ cents; New Bloomfield, 12½ cents; which rates were found reasonable in *Reshipping Rates on Grain from Omaha, Nebr.*, 32 I. C. C., 590. The rates charged on the shipments in the instant case were found unreasonable, 32 I. C. C., 597, to the extent that they exceeded the rates approved in *Reshipping Rates on Grain from Omaha, Nebr.*, *supra*. Reparation was found due on certain shipments to south branch stations on the Chicago & Alton between Mexico and the Missouri River, but was not awarded, as the record was insufficient. The customary statements from complainant relative to the shipments and their verification by defendants was required. Our report was dated January 19, 1915. Complainant submitted the required statements to defendants for verification, but on November 12, 1915, informed us that the parties were unable to reach an agreement and requested further hearing, which was granted.

We find that the following-named corporations, engaged in the purchase and sale of grain at Omaha, made shipments as hereinafter described and paid and bore charges thereon at rates which were found to have been unreasonable; that they have been damaged to the extent of the difference between the charges paid and the charges which would have accrued at the rates found reasonable; and that they are entitled to reparation in the sums specified, with interest from the dates stated:

Urdike Elevator Company: Three carloads of oats and one carload of corn, from South Omaha to Auxvasse, McCredie, and Fulton, respectively; total charges, \$349.80; reparation, \$113.10, with interest from April 22, 1914.

Trans-Mississippi Grain Company: One carload of oats and one carload of corn, from Council Bluffs to McCredie; total charges, \$210.12; reparation, \$67.98, with interest from January 23, 1914.

Nye-Schneider-Fowler Company: Three carloads of corn, from Omaha to Fulton and New Bloomfield; total charges, \$303.65; reparation, \$94.42, with interest from February 10, 1914.

An order awarding reparation will be entered accordingly.

40 I. C. C.

No. 6924.
ISAAC JOSEPH IRON COMPANY
v.
MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAM-
SHIP COMPANY ET AL.

FOURTH SECTION APPLICATION No. 461.

Submitted June 16, 1916. Decided June 29, 1916.

Conclusions reached in the original report in this case adhered to.

H. C. Barnes, Ellis & Donaldson, and C. E. Cotterill for complainant.

Denegre, Leovy & Chaffe; Baker, Botts, Parker & Garwood; and F. H. Wood for defendants.

SUPPLEMENTAL REPORT OF THE COMMISSION.

BY THE COMMISSION:

This case was reopened upon defendants' petition for further consideration upon brief. The original report appears in 37 I. C. C., 591.

For the purposes of this report it is sufficient to say that a rate of 30 cents per 100 pounds was charged on certain shipments of scrap iron from Houston, Tex., to Chicago, Ill., via New Orleans, La. There was contemporaneously in effect a proportional rate of 9½ cents per 100 pounds from Houston to New Orleans "when destined to points beyond to which no through rates are published," and a rate of \$3.31 per net ton from New Orleans to Chicago. The rate charged exceeded the combination rate by 79 cents per ton. We held that the 9½-cent proportional rate was not so restricted or limited as to make it inapplicable as a factor in constructing a through rate to Chicago had there been no joint rate in effect, and we found that the joint rate of 30 cents was unreasonable to the extent that it exceeded the combination of intermediate rates contemporaneously in effect. Orders were entered for reparation and denying relief from the aggregate of intermediates rule of the fourth section. When the case was reopened, the order for reparation was vacated and set aside, but the fourth section order was continued in full force and effect.

In *Windsor Turned Goods Co. v. C. & O. Ry. Co.*, 18 I. C. C., 162, we dealt with an analogous situation, and said:

The fair measure of the reasonableness of a joint through rate that exceeds the combination between the same points via the same route is and will hereafter be held to be the lowest combination that would lawfully apply if the joint through rate were canceled.

That rule is affirmed and it applies in the instant case. We adhere to our previous decision, and will accordingly reenter the order for reparation.

The petition for rehearing was filed because certain carriers construed our decision as a ruling that all restricted proportional rates were to be considered in determining whether or not the through rate exceeds the aggregate of the intermediate rates. It is to be understood that we are dealing only with the facts in this case, including the fact that the proportional rate in question was not so properly restricted or limited as to make its application definite, clear, or ascertainable, and what we have here held is not to be construed as applicable in cases where the use of proportional rates is properly defined.

DANIELS, *Commissioner*, dissenting:

Unqualifiedly disapproving the character of the item carrying said proportional rate of 9½ cents, I am unable to accord it any validity whatever by using it as a factor in the aggregate of intermediates in relation to which a lawful through rate is determined for the purpose of measuring damage on which to award reparation.

40 I. C. C.

No. 7814.
SHELDON BOTTLING WORKS
v.
**CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
COMPANY ET AL.**

Submitted July 13, 1915. Decided June 29, 1916.

Rates charged by defendants for the transportation of soft drinks from Sheldon, Iowa, to Trosky, Wilmont, Kenneth, Lismore, Jasper, Round Lake, Hardwick, Reading, and Ellsworth, Minn., and of empty bottles returned to Sheldon, not found to be unreasonable. Complaint dismissed.

F. W. Knoche for complainant.

R. G. Brown for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are Paul Fiebig, E. L. Fiebig, and V. J. Fiebig, copartners, engaged in the manufacture of soft drinks at Sheldon, Iowa, under the name of Sheldon Bottling Works. By complaint, filed March 6, 1915, they allege that the rates charged by defendants for the transportation of numerous less-than-carload shipments of soft drinks from Sheldon to Trosky, Wilmont, Kenneth, Lismore, Jasper, Round Lake, Hardwick, Reading, and Ellsworth, Minn., and of empty bottles returned from these points to Sheldon during the period from July 9, 1912, to November 25, 1914, were unreasonable as compared with rates to and from Sioux City, Leeds, James, Hinton, and Merrill, Iowa. A violation of the long-and-short-haul rule of the fourth section also is alleged. Reparation is asked. The claims on certain shipments were presented to the Commission informally on June 3, August 10, October 18, and November 22, 1914.

The shipments, about 1,000 in number, moved over the Chicago, St. Paul, Minneapolis & Omaha Railway and Chicago, Rock Island & Pacific Railway via Sibley, Iowa, or Worthington, Minn. No joint rates were applicable, and charges were collected at combination rates based on Sibley or Worthington as follows: Soft drinks to Trosky and Wilmont 34 cents per 100 pounds, to Lismore 37 cents, to Jasper 41 cents, to Round Lake 32 cents, to Hardwick 39 cents, to Reading 31 cents, to Ellsworth 27 cents, to Kenneth 38 cents; empty bottles returned 15 cents per 100 pounds from Trosky, Round Lake, Reading, and Wilmont, 17 cents from Lismore and Jasper, 18 cents

from Hardwick, 10½ cents from Ellsworth, 17½ cents from Kenneth. The tariffs show that lower combination rates were in effect as follows:

	Soft drinks to.	Empty bottles from.	Effective date.
Trosky.....	33.9	¹ 14.6	
Lismore.....	37.0	² 17.0	July 9, 1912, to Aug. 25, 1913.
	33.1	15.7	Aug. 25, 1913, to Feb. 5, 1914.
	32.6	15.5	Feb. 5, 1914, to Nov. 25, 1914.
Jasper.....	¹ 34.9	15.1	
	² 32.0	15.5	July 9, 1912, to Aug. 25, 1913.
Round Lake.....	31.1	14.9	Aug. 25, 1913, to Feb. 5, 1914.
	30.6	14.75	Feb. 5, 1914, to Nov. 25, 1915.
Hardwick.....	¹ 32.9	14.1	
	² 32.0	15.5	July 9, 1912, to Aug. 25, 1913.
Reading.....	31.1	14.9	Aug. 25, 1913, to Feb. 5, 1914.
	30.6	14.75	Feb. 5, 1914, to Nov. 25, 1914.
Ellsworth.....	¹ 26.9	12.1	
	² 34.0	16.0	July 9, 1912, to Aug. 25, 1913.
Wilmont.....	31.8	15.15	Aug. 25, 1913, to Feb. 5, 1914.
	31.3	15.0	Feb. 5, 1914, to Nov. 25, 1914.
	² 38.0	17.5	July 9, 1912, to Aug. 25, 1913.
Kenneth.....	33.8	15.95	Aug. 25, 1913, to Feb. 5, 1914.
	33.3	15.7	Feb. 5, 1914, to Nov. 25, 1914.

¹ Combination on Sibley, Iowa.

² Combination on Worthington, Minn.

There are therefore outstanding overcharges and undercharges which must be adjusted.

The rates on soft drinks from Sheldon and on bottles returned to Sheldon were higher than the rates contemporaneously maintained on the same commodities from and to Sioux City, Leeds, James, Hinton, and Merrill, Iowa. Sheldon is intermediate to these points over the routes of movement, and since the complaint was filed joint rates have been established eliminating the departures from the long-and-short-haul rule of the fourth section which the earlier adjustment involved.

We find no evidence that the rates assailed were unreasonable, other than departures from the long-and-short-haul rule of the fourth section which were protected by appropriate fourth section applications.

Reparation will be denied and the complaint dismissed.

40 I. C. C.

No. 7848.

WESTERN CHEMICAL MANUFACTURING COMPANY
v.
DENVER & RIO GRANDE RAILROAD COMPANY ET AL.

Submitted December 6, 1915. Decided June 28, 1916.

Rate of 73 cents per 100 pounds charged on a carload shipment of sulphuric acid from Louviers, Colo., to Port Arthur, Tex., found to have been unreasonable to the extent that it exceeded 33 cents. Reparation awarded.

Frank R. Ashley for complainant.

J. G. McMurry for Denver & Rio Grande Railroad Company.

A. S. Brooks for Colorado & Southern Railway Company, Fort Worth & Denver City Railway Company, Houston & Texas Central Railroad Company, and Texas & New Orleans Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of acids, with its principal place of business at Denver, Colo. By complaint, filed March 23, 1915, it alleges that the rate charged by defendants for the transportation of a carload of sulphuric acid from Louviers, Colo., to Port Arthur, Tex., in October, 1912, was unreasonable and unjustly discriminatory. Reparation is asked. The claim was presented to the Commission informally July 27, 1914.

Complainant routed the shipment: Denver & Rio Grande Railroad to Trinidad, Colo.; thence Colorado & Southern, Fort Worth & Denver City, Houston & Texas Central, and Texas & New Orleans railroads to destination. No joint rate was applicable over this route, and charges were collected in the sum of \$778.18 on 106,600 pounds of acid at a combination rate of 73 cents per 100 pounds, composed of a rate of 40 cents from Louviers to Trinidad and a rate of 33 cents thence to Port Arthur. The Denver & Rio Grande and the Colorado & Southern practically parallel each other from Denver, which is about 21 miles north of Louviers, to Trinidad. They intersect at Pueblo, Walsenburg, and Trinidad, Colo., and operate over the same tracks for a distance of 50 miles between Pueblo and Walsenburg. When the shipment moved, defendants published a rate of 33 cents from and to the points, but applicable only on shipments delivered to the Colorado & Southern Railway at

Pueblo. Effective January 12, 1914, the 33-cent rate was established over the route of movement. Complainant alleges that the rate charged was unreasonable and unjustly discriminatory to the extent that it exceeded 33 cents.

The 33-cent rate asked applied from all Colorado common points, but its application from points on the Denver & Rio Grande between Denver and Pueblo was restricted to a movement over the Colorado & Southern from Pueblo. The difference in distances over the route the shipment moved and over the route by which the 33-cent rate applied was about 6 miles. Defendants' witness stated that Trinidad should have been published originally as a point of interchange and the Colorado & Southern and Fort Worth & Denver City admit in their answers that the rate charged was unreasonable to the extent that it exceeded 33 cents.

We find that the rate charged was unreasonable to the extent that it exceeded 33 cents per 100 pounds; that complainant made the shipment as described and paid and bore the charges thereon at the rate herein found unreasonable; and that it is entitled to reparation in the sum of \$426.40, with interest. An order awarding reparation will be entered, but as the 33-cent rate has been in effect over the route of movement for more than two years no order will be entered for the future.

40 I. C. C.

No. 7874.
PURITY OATS COMPANY
v.
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY
ET AL.

Submitted July 13, 1915. Decided June 28, 1916.

Rate of 40½ cents per 100 pounds charged for the transportation of rolled oats from Keokuk, Iowa, to Denver and Pueblo, Colo., not found to have been unreasonable. Complaint dismissed.

F. W. Knoche for complainant.

K. F. Burgess for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of cereal products, with its principal place of business at Keokuk, Iowa. By complaint, filed March 30, 1915, it alleges that a rate of 40½ cents per 100 pounds charged by defendants for the transportation of various carload shipments of rolled oats from Keokuk to Denver and Pueblo, Colo., during the period from September 19, 1912, to May 8, 1914, was unreasonable and unjustly discriminatory to the extent that it exceeded 35½ cents. Reparation is asked and the establishment of a reasonable rate for the future. The claims covering the earlier shipments were presented to the Commission informally May 1, 1914.

All of the shipments were moved by the Chicago, Burlington & Quincy Railroad to Denver, and beyond Denver by the Colorado & Southern Railway. A joint through rate of 40½ cents per 100 pounds was applicable to both points and was charged, which rate was based on the rate of 10½ cents applicable on corn to the Missouri River, and a rate of 30 cents beyond applicable on wheat. Complainant bases its claim that the rate charged was unreasonable upon an allegation that there was a rate of 34.5 cents on corn which applied on rolled oats from Keokuk to Derby, Colo., 7 miles east of Denver, and a rate of 4 cents from Derby to Denver.

Derby marks the limit of the application of the western trunk line rules on westbound business from points east of the Missouri River, but the rates to Colorado common points, including Denver and Pueblo, are made on a different basis. On corn and its products,

including hominy, the 35½-cent rate on corn applied to Colorado common points. Defendants contend that the rate basis on rolled oats from the Missouri River to Colorado common points has been in effect since 1898; that wheat, corn, and oats load much heavier than rolled oats; and that the car-mile earnings of 13 cents and ton-mile earnings of 8.7 mills under the rate applied were far from excessive. Complainant's evidence against the reasonableness of the rate assailed was confined to citations of tariffs naming lower rates on rolled oats in western trunk line and trans-Missouri territories, and on corn and its products, including hominy, and on oats, between Keokuk and Colorado common points.

We find that the rate assailed is not shown to have been unreasonable, and the complaint will be dismissed.

40 I. C. C.

No. 7913.
DEERE & COMPANY
v.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY
COMPANY.

Submitted December 16, 1915. Decided July 6, 1916.

Application of defendant's demurrage rules to three carloads of castings and lumber at East Moline, Ill., not found to have resulted in unreasonable or unduly prejudicial charges. Complaint dismissed.

A. R. Ebi for complainant.

O. W. Dynes and *O. G. Mars* for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of agricultural implements, with its principal place of business at Moline, Ill. By complaint, filed April 12, 1915, it alleges that due to the unreasonableness of defendant's demurrage rules and regulations the demurrage charges assessed at East Moline, Ill., in October and November, 1913, on four carloads of castings and lumber were unreasonable and unjustly discriminatory. Reparation is asked.

Defendant agreed to construct additional industry tracks to serve complainant's harvester plant at East Moline in June, 1913. The tracks were not fully completed until about November 1, 1913. In the meantime complainant ordered the shipments involved, three of which originated at Jackson, Miss., and Milwaukee, Wis. One originated at East Moline, and as it is not shown to have moved interstate will not be further considered. On October 1, 1913, and November 2, 1913, the cars under consideration were placed by defendant on private tracks located within complainant's plant at East Moline, at points where complainant was accustomed to receive shipments. Complainant accepted delivery where the cars were placed, but unloaded them only after \$13 demurrage had accrued. Complainant admits that these charges were legally applicable under defendant's demurrage rules, but asserts that it was unable to unload the material sooner than it did owing to car congestion on its tracks attributable to the lack of facilities caused by defendant's failure to construct the additional tracks agreed upon with reasonable promptness.

Complainant contends that defendant's demurrage rules were and are unreasonable in that they contain no provision to the effect that demurrage shall not be assessed for unavoidable delay caused by conditions such as those described. Defendant does not deny that its tracks were congested when the demurrage charges accrued, or that some of the delay in constructing the tracks was avoidable on its part. It does not admit that its demurrage rules were or are unreasonable, and is unwilling to have them modified to provide for situations so unusual.

Since March 1, 1914, complainant has operated under the average agreement, which has proved satisfactory, and there is no evidence that complainant had any difficulty before the period mentioned in unloading its cars within the free time allowed, or that it has had any difficulty in doing so since. The point or points at which the deliveries in issue were accepted may have been less convenient for unloading than locations on the uncompleted tracks would have been, but there is no showing that it was not practicable for complainant to finish the unloading within the free time allowed.

We find that neither the demurrage charges assailed nor the rules under which they were assessed are shown to have been unreasonable or unduly prejudicial, and an order dismissing the complaint will be entered.

40 I. C. C.

No. 7936.
COUNT R. BOYD
v.
ALABAMA, TENNESSEE & NORTHERN RAILROAD
COMPANY ET AL.

Submitted January 17, 1916. Decided June 28, 1916.

Rates charged for the transportation of certain carload shipments of yellow-pine lumber from Climax, Ala., to Nashville, Tenn., found unreasonable to the extent that they exceeded a rate of 16 cents per 100 pounds. Reparation awarded.

Perkins Baxter and *O. P. Anderson* for complainant.

Russell Houston for Alabama, Tennessee & Northern Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is engaged in the purchase and sale of lumber, with his principal place of business at Nashville, Tenn. By complaint, filed April 21, 1915, he alleges that the rates charged by defendants for the transportation of 11 carloads of yellow-pine lumber shipped during the period from July 15, 1913, to October 20, 1913, from Climax, Ala., to Nashville, Tenn., were unreasonable and unjustly discriminatory to the extent that they exceeded a rate of 16 cents. Reparation is asked. The allegation of unjust discrimination was subsequently abandoned.

The shipments moved: Alabama, Tennessee & Northern Railroad from Climax to Reform, Ala.; Mobile & Ohio Railroad to Jackson, Tenn.; Nashville, Chattanooga & St. Louis Railway to destination. Complainant testified that rates ranging from 20 cents to 25 cents per 100 pounds were assessed, but the basis for such rates does not appear. Complainant paid the charges assessed on all but five shipments. He paid charges on the excepted shipments on the basis of 16 cents and refused to pay more.

Climax is a nonagency station, 2 miles north of Lisman, Ala., both points being on the Alabama, Tennessee & Northern. No joint rate was applicable during the period of movement from Climax to Nashville, but a joint rate of 16 cents per 100 pounds was in effect over defendants' route from Lisman to Nashville until July 22, 1913, which was after three of complainant's shipments moved. The 16-cent rate from Lisman was canceled July 22, 1913, but was reestablished April 1, 1914, when it was also made applicable for the first time from

Climax. It was canceled again on July 21, 1914, and has not applied since over defendants' rails from either Lisman or Climax. The evidence suggests that the cancellation resulted from a disagreement over the question of divisions.

Nashville is 457 miles from Climax over the route of movement. Complainant cites rates of 15 cents per 100 pounds on lumber to Nashville from the following points: Yellow Pine, Ala., 480 miles; McComb, Miss., 489 miles; Hattiesburg, Miss., 501 miles; Gerry, La., 662 miles. Other similar rates are cited. Three-line hauls are involved from some of the points cited. The present rate, effective October 29, 1912, from Climax to Nashville, in connection with the Southern Railway at York and the Louisville & Nashville at Calera, Ala., 402 miles, is 16 cents. This rate was in force from Lisman throughout the period of movement. One of defendants' representatives testified that he regarded the 16-cent rate asked by complainant as reasonable, and expressed willingness on the part of his company to join in reestablishing it. The remaining defendants submitted no evidence to support the rates applied or against the rate proposed.

We find that the rates charged were and for the future will be unreasonable to the extent that they exceeded or may exceed a rate of 16 cents per 100 pounds, which we find to be reasonable; that complainant made the shipments as described, and paid and bore charges thereon at the rates herein found unreasonable; that it has been damaged to the extent that the charges paid exceeded the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation with interest. The exact amount of reparation can not be determined on this record, and complainant should prepare a statement showing, as to each shipment on which reparation is claimed, the date of shipment, route of movement, weight, car number and initials, rate applied, charges collected and date of payment, and the amount of reparation due under our findings herein, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared by complainant and verified by defendants, we will consider the entry of an order awarding reparation. The unpaid balance of charges described on five shipments may be waived.

An appropriate order will be entered.

No. 7960.
NORTH DAKOTA METAL CULVERT COMPANY
v.
GREAT NORTHERN RAILWAY COMPANY.

Submitted November 18, 1915. Decided June 29, 1916.

1. Combination rate of 73 cents per 100 pounds on plate-iron culverts in carloads from Fargo, N. Dak., to Arnegard, N. Dak., by an interstate route, found not to have been unreasonable.
2. Joint rate of \$1 on plate-iron culverts in carloads between the same points found unlawful to the extent that it exceeds the aggregate of intermediate rates.

F. O. Gibbs for complainant.

H. H. Brown for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in buying and selling plate-iron culverts, with its principal office at Fargo, N. Dak. By complaint, filed April 29, 1915, it alleges that the rate of 73 cents per 100 pounds charged by defendant for the transportation of two carloads of plate-iron culverts from Fargo to Arnegard, N. Dak., over an interstate route, was unreasonable and unjustly discriminatory to the extent that it exceeded 56 cents per 100 pounds. Reparation is asked and the establishment of a reasonable rate.

The shipments weighed 25,060 pounds each and moved in June and August, 1914, by way of the Great Northern Railway. Charges were collected in the total sum of \$365.88 at fourth-class combination distance rates of 50 cents per 100 pounds to Mondak, Mont., 377 miles; 6 cents to Snowden, Mont., 3 miles; and 17 cents to Arnegard, 44 miles; a total of 73 cents for 424 miles. A specific through fourth-class distance rate of \$1 per 100 pounds was applicable and the shipments were undercharged \$135.32. The discrepancy between the through rate and the aggregate of intermediate rates was not protected by a fourth section application.

Arnegard is located on a branch of defendant's line, which was then under construction from Snowden. Complainant contends that the rate charged should not have exceeded 56 cents per 100 pounds, the rate for similar distances between points in North Dakota. Complainant cites numerous rates on sheet-iron culverts for similar distances between points in northern and central western states lower than the rate charged, but many of these rates do not apply over

defendant's line, and some of them apply between competitive points one or both of which are on other lines. With the exception of a few rates applicable to intrastate movements for somewhat shorter distances, the rates cited apply between points not in the immediate territory traversed by the shipments in question, and the transportation conditions under which they apply are not shown to be substantially the same as those under which the rate assailed applies.

An exhibit on defendant's behalf shows rates for distances varying from 412 miles to 427 miles between stations in North Dakota and South Dakota and main-line stations in Montana on defendant's lines and parallel lines of other carriers, which rates are substantially the same as the rate charged.

We find that the rate assailed is not shown to have been unreasonable or unjustly discriminatory, but that the through fourth-class rate of \$1 is unlawful to the extent that it exceeds the aggregate of intermediate rates, and an order will be entered accordingly. The existing undercharge may be waived.

40 I. C. C.

No. 8022.
WILLIAM H. FISSELL
v.
BALTIMORE & OHIO RAILROAD COMPANY ET AL.

Submitted November 17, 1915. Decided June 29, 1916.

Allegation of complaint that charges on a carload of contractors' outfit were assessed on an excessive weight found not sustained and complaint dismissed.

Thomas S. Ormiston for complainant.

H. E. Chapin, Francis R. Cross, and W. C. Coleman for Baltimore & Ohio Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a builder, trading as W. H. Fissell & Company, with his principal place of business at New York, N. Y. By complaint, filed May 15, 1915, he alleges that the charges collected by defendants for the transportation of a carload shipment of contractors' outfit from Grafton, W. Va., to Wytheville, Va., November 17, 1914, were unreasonable in that they were computed on the basis of an erroneous weight. Reparation is asked.

The shipment consisted of engines, machines, tools, and commodities used in the construction of buildings, including a large quantity of terra cotta building tiles. Charges were collected at a rate of 34 cents per 100 pounds, on 63,100 pounds, the weight registered by the track scales of the Baltimore & Ohio Railroad at Grafton. No complaint is made against the rate applied.

It is alleged in the complaint that the shipment weighed 35,150 pounds, but at the hearing 38,472 pounds was submitted as the weight. In an informal complaint filed shortly after the shipment moved, the figure 33,100 pounds was given. Complainant, who was both consignor and consignee, did not weigh the shipment, in whole or in part, but attempted to show the weights of the various articles listed in the bill of lading from estimates furnished by manufacturers of such articles or dealers in them, from weights shown on bills of lading covering similar articles, or from his own general knowledge. No one with actual knowledge of the weight of the shipment, or who was present when the car was loaded, or who could testify as to the exact contents of the car appeared at the hearing. Defendants

contend that the track scale weight should prevail over an estimated weight.

The car was spotted, cut loose at both ends, and weighed on standard platform scales at Grafton. The certificate of the weighmaster at that point shows the following weights: Gross, 102,900; tare, 39,800; net, 63,100. The scales used were tested on July 4, 1914, and December 3, 1914, and found to be in good condition on both dates. Complainant made no attempt to show any inaccuracy in the scales used, but based his case entirely upon the discrepancy between the scale weights and the estimated weights described. Defendants' tariffs granted shippers the privilege of having a car reweighed. Complainant did not request reweighing, but for the reason that he did not learn the weight on which charges were assessed until the shipment had been unloaded.

We find the evidence introduced by complainant insufficient to justify a disregard of the scale weight, which presumably was correct, *Palmer & Semans Lumber Co. v. C. & O. Ry. Co.*, Docket No. 7096, unreported, and the complaint will be dismissed.

40 I. C. C.

No. 7917.
CHATTAHOOCHEE LUMBER COMPANY
v.
ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

PARTS OF FOURTH SECTION APPLICATIONS Nos. 703
AND 1548.

Submitted November 15, 1915. Decided June 28, 1916.

Defendants' rates for the transportation of lumber in carloads from Lela and Eleanor, Ga., to Danville, Va., not shown to be unreasonable or unduly prejudicial. Complaint dismissed.

A. E. Stokes for complainant.

R. Walton Moore and *Frank W. Gwathmey* for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business, with headquarters at Lela, Ga. By complaint, filed April 13, 1915, it alleges that the rates charged by defendants for the transportation of 261 carloads of lumber from Lela and Eleanor, Ga., to Danville, Va., during the period from November, 1912, to August, 1913, inclusive, were and are unreasonable and unduly prejudicial and in violation of the long-and-short-haul rule of the fourth section, in that they exceeded the rates to more distant points, such as Lynchburg, Va. Reparation is asked and the establishment of reasonable rates for the future. The claim was presented to the Commission informally June 17, 1914.

Both points of origin are local points on the Atlantic Coast Line Railroad in southwest Georgia. Danville is in Carolina territory, which includes that portion of Virginia, the Carolinas, and Georgia which lies south of the main line of the Norfolk & Western Railway from Norfolk, Va., to Roanoke, Va., and thence to Bristol, Tenn.-Va., and north of a line drawn from Atlanta, Ga., through Augusta, Ga., to Charleston, S. C.

The shipments were moved by the Atlantic Coast Line Railroad to Savannah, Ga., and by the Southern Railway thence to Danville. A joint rate of 24.5 cents per 100 pounds was charged from

Lela; a joint rate of 24 cents from Eleanor on 10 shipments from that point. The remaining six shipments from Eleanor were overcharged one-half cent per 100 pounds, but defendants state that since the hearing they have refunded the overcharges collected.

Danville is 656 miles from Lela over the route of movement, which is the short route, and 636 miles from Eleanor. A carload rate of 20 cents was and is in effect on lumber from Lela and Eleanor to Lynchburg, Va., 66 miles beyond Danville over the same route. Lynchburg is one of the "Virginia cities" and rates to that point are on the Virginia cities basis.

There was, therefore, a departure from the long-and-short-haul rule of the fourth section, which is complainant's principal evidence in support of its allegation that the rate charged was unreasonable. It is also shown, however, that of all the class rates maintained only the first, third, fourth, and sixth class rates are lower from Lela to Danville than to Lynchburg. All of the class rates from Eleanor, except fourth-class rates, are lower to Lynchburg than to Danville. An exhibit introduced by complainant compares the rate from Lela to Danville with relatively lower rates on lumber from Lela to St. Louis, Mo., Chicago, Ill., and various points in other directions, but counter exhibits filed by defendants indicate that the rates assailed compare favorably with lumber rates to Danville from a number of representative shipping points in the southeast and to a number of representative destinations in Carolina territory from Lela to Eleanor. A witness for complainant admitted that his company was perfectly satisfied with the rates in issue during the period the shipments moved and until the company was subsequently advised that a lower rate applied to Lynchburg. Complainant is no longer in the lumber business at Eleanor and ships no lumber from that point.

We find that the rates assailed are not shown to have been or to be unreasonable or unduly prejudicial.

Those portions of Atlantic Coast Line Railroad Fourth Section Application No. 702 and of Southern Railway Fourth Section Application No. 1548, in which authority is sought to continue rates on lumber from Lela and Eleanor to Lynchburg lower than the rates contemporaneously applicable on lumber to Danville and other intermediate points, were heard with the complaint. The rates from Lela and Eleanor to Lynchburg are only a part of a general adjustment of lumber rates from south Georgia, Alabama, and Florida lumber-producing points under which the rates to the Virginia cities uniformly are lower than to adjacent intermediate points in Carolina territory. The same is true generally of rates on other

commodities. Other markets and carriers are vitally interested in the adjustment, and the fourth section issue presented is too broad to be determined upon the record in this case. We accordingly make no finding relative to the fourth section applications, leaving the questions which they present for determination on a more comprehensive record.

An order will be entered dismissing the complaint.

No. 7445.

WESTERN CONSOLIDATED COAL COMPANY
v.
CHICAGO, TERRE HAUTE & SOUTHEASTERN RAILWAY
COMPANY.

Submitted September 12, 1915. Decided July 6, 1916.

Reconsigning charge on a carload of coal from St. Clare, Ind., to Chicago, Ill., reconsigned in transit, not shown to have been unlawful. Complaint dismissed.

Arthur C. Marriott and George Skakel for complainant.
William F. Peter for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the wholesale coal business at Chicago, Ill. By complaint, filed October 29, 1914, it alleges that the charge of \$1.50 collected by defendant for reconsigning a carload of bituminous coal, shipped November 7, 1912, from St. Clare, Ind., consigned to complainant at Chicago and reconsigned in transit at Faithorn, Ill., to the City Fuel Company, North Halsted street dock, Chicago, was illegal and unreasonable. Reparation is asked on all shipments similarly consigned to Chicago and reconsigned at Faithorn during the two-year period preceding the filing of the complaint and since the complaint was filed.

The shipment was delivered to defendant at St. Clare, November 7, 1912, billed flat to complainant at Chicago and routed specifically "C T H & S E - B & O C T". It moved in a 60,000-pound car to 40 I. C. C.

Faithorn, defendant's northern terminus, situated about 12 miles south of the Chicago switching district, and its only point of interchange with the Baltimore & Ohio Chicago Terminal Railway. Complainant had no yards, private sidings, or storage facilities at Chicago. The shipment arrived at Faithorn November 10, 1912, and was switched to defendant's hold tracks. It was reconsigned to the City Fuel Company, North Halstead street dock, Chicago, on November 13, 1912, and was moved to that point by the Baltimore & Ohio Chicago Terminal Railway and the Chicago, Milwaukee & St. Paul Railway. A reconsigning charge of \$1.50 was assessed.

The following provisions for the assessment of reconsigning charges were in effect on defendant's line from October 4, 1909, to August 15, 1913:

On bituminous coal consigned to points in the Chicago switching district as described in S. I. Ry. G. F. O. 214-G, I. C. C. No. 615, Chicago Southern G. F. D. 55-C, or subsequent issues, a charge of 5 cents per ton based on the marked capacity of the car with a maximum charge of \$2 per car, will be made for any change in the billing as originally made at the mines, affecting either consignee, destination or delivery. Except that if order for reconsigning the car is filed with this company previous to the arrival of the car at destination so that no extra service is required, no charge will be made for reconsignment.

The billing from the mines on the coal consigned to team tracks or parties operating more than one yard must show specific delivery.

If coal is billed to or held at an intermediate point and destination changed to Chicago, Chicago district or beyond, same will be subject to the reconsigning charges as above.

Complainant contends that the reconsigning order was filed previously to the arrival of the shipment at destination; that no extra service was rendered by defendant; and that the reconsigning charge assessed was unreasonable and without lawful tariff authority. The evidence offered relates solely to the legality of the charge.

Defendant states that its practice has been to hold coal billed flat to Chicago at Faithorn pending the receipt of delivery or reconsigning orders. It contends that Chicago dealers understood the arrival of such shipments at Faithorn to mean constructive placement at destination; that the order reconsigning the shipment involved was received after the arrival of the car at Faithorn; and that the switching movement to and from the hold tracks at that point constituted an extra service within the meaning of the tariff applicable, which justified the imposition of the charge attacked. Certain coal dealers testified to the general understanding that coal billed flat to Chicago would be held at Faithorn for further orders and complainant testified that the car in controversy was billed flat to Chicago for that purpose. Moreover, its shipments have been so handled for several years. It exercised its right to consign under defendant's rule

and made no demand for transportation beyond Faithorn before reconsignment.

Effective August 15, 1913, defendant published a clear provision that no charge for reconsignment would be made on bituminous coal consigned to points within the Chicago switching district, if the order therefor were filed prior to the arrival of the car at Faithorn so that no extra service would be required, but prescribed a charge for reconsigning shipments held at Faithorn without specific delivery being shown. The present tariff provides for the free reconsignment of coal consigned to points within the Chicago district if a reconsigning order is received by defendant at Chicago before the shipment arrives at Faithorn or before 3 p. m. of the next business day following the date of the waybill. Besides requiring that the billing or the reconsigning orders covering shipments of coal to Chicago, Chicago district, or beyond shall show the specific delivery required this tariff also provides that if such specific delivery is not shown shipments will be held at Faithorn subject both to demurrage and reconsignment charges.

We find that the charge in issue was within the terms of defendant's reconsignment rules, and that it is not shown to have been unreasonable.

An order will be entered dismissing the complaint.

40 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 748.

DYES FROM NEW YORK, N. Y.

Submitted May 24, 1916. Decided July 6, 1916.

Proposed cancellation of commodity rates on aniline and alizarine dyes from New York, N. Y., and adjacent points, to North Adams, Mass., and certain other points, found justified.

John M. Sternhagen for New York Central Railroad Company.

L. H. Kentfield for New York, New Haven & Hartford Railroad Company.

George H. Eaton for Boston & Maine Railroad.

R. Van Ummersen for Boston & Albany Railroad Company.

J. H. Fishback for protestant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By schedules, filed to take effect December 1, 1915, respondents proposed to cancel their present commodity rates on aniline and alizarine dyes from New York, N. Y., and adjacent points, to North Adams, Mass., on the Boston & Maine and the Boston & Albany railroads, rendering applicable higher class rates. Similar increases, by the cancellation of commodity rates, were also proposed in the rates from New York to a few points in Massachusetts and Connecticut on the New York, New Haven & Hartford Railroad, hereinafter called the New Haven. Upon protest of the Arnold Print Works, of North Adams, the schedules were suspended until March 30, 1916, and later until September 30, 1916. The protest relates only to the less-than-carload rates from New York to North Adams. All rates herein are stated in cents per 100 pounds.

Several routes are available for traffic from New York to North Adams: Rail routes by the New York Central and the Boston & Maine, 196 miles; and by the New York Central and the Boston & Albany, 178 miles; water-and-rail routes by way of barge and steamship lines to Troy, N. Y., about 160 miles, Boston & Maine beyond, 48 miles; and by way of the New England Steamship Company in connection with the New Haven. There is also a longer rail route over the New Haven and the Boston & Maine through Northampton, Mass. Practically all of protestant's traffic moves by the New York Central-Boston & Albany route.

The present commodity rates are 15 cents any quantity by the barge line and the Boston & Maine, and 14 cents by the other routes shown. The official classification, which governs traffic from New York to North Adams, rates aniline and alizarine dyes, in less than carloads, in bulk, barrels, or boxes, second class, and in other containers, first class; in carloads, third class. The first and second class rates from New York to North Adams, by way of the barge line and the Boston & Maine, are 25 cents and 21 cents, respectively; and 28 cents and 24 cents, respectively, by the other routes.

Water-and-rail commodity rates ranging from 10 cents to 14 cents have long been in effect through Troy. The present all-rail rate was established prior to 1910 over the several routes to meet the water-and-rail rate.

Several years ago the Boston & Maine experienced financial difficulties. It is testified that the rates then in effect involved inconsistencies and discriminatory features. The railroad commissions of several of the New England states held a number of informal hearings and conferences for the purpose of devising means to remedy the situation. The result was a revision of the Boston & Maine's entire rate structure. A new scale of local class rates, which was suggested, was established by the Boston & Maine April 1, 1914. Commodity rates applied between many points on mill supplies of every description, including aniline and alizarine dyes, which were considered unreasonably low. These rates were canceled with the approval of the New Hampshire commission, delegated to cooperate with the railroad in revising such rates. Aniline and alizarine dyes, and other commodities, thereby were placed on the class basis. Subsequently the Boston & Albany and the New Haven similarly revised their class and commodity rates, adopting the same class-rate scale as the Boston & Maine. After the local rates had been readjusted it developed that many joint rates from New York to mill points on the Boston & Maine and the Boston & Albany were relatively lower than the new local rates, and, in order to remove discriminations, these joint rates were placed on a parity with the local rates.

Apparently there are no commodity rates on aniline and alizarine dyes from New York to points other than North Adams on the Boston & Maine or the Boston & Albany. Respondents state that the discrimination which now exists will be removed and that departures from the long-and-short-haul rule of the fourth section, with respect to points intermediate to North Adams which now take class rates, will be eliminated by placing the rate to North Adams on the class basis. They also argue that the present rate on this traffic is unreasonably low.

Comparisons are offered with the rates applying locally on the Boston & Maine from Boston to mill points where dyes are used, and with the rates from New York to other mill points approximately the same distance from New York as North Adams. For example, the first-class rate over the Boston & Maine from Boston to Andover, Mass., 23 miles, is 14 cents; to North Adams, 142 miles, 33 cents. The present first-class rate for 178 miles, the distance from New York to North Adams over the New York Central and the Boston & Albany, maintained by the Boston & Maine and other respondents, is said to be 36 cents, while the rate for 196 miles, the distance from New York to North Adams over the New York Central and the Boston & Maine, is 38 cents.

Aniline and alizarine dyes are usually imported and generally move in less than carloads. They are shipped in powder, liquid, or paste form. The values vary according to the amount of coloring matter which they contain. Paste dyes containing 20 per cent of coloring matter are valued normally at from 12 cents to 42 cents per pound. About 75 per cent of these dyes shipped to North Adams are in liquid or paste form. Respondents assert that under their class scales the present 14-cent rate would be equivalent to the fifth-class rate for a distance of 178 miles. They also assert that generally throughout official classification territory these dyes are carried on the classification basis, and that since 1888 the rating in less than carloads has been first and second class, with minor changes as to the containers.

Protestant urges that the proposed rates represent a material increase; that the present net earnings of respondents do not indicate that further increases in rates are necessary; and that the maintenance of the present rate for so long a period raises the presumption that it is reasonable. North Adams, on account of its proximity to the Hudson River, is said to be entitled to lower rates from New York than apply for a similar distance from Boston, and that, regardless of what may be charged as a reasonable maximum rate over the all-rail routes, a lower rate should apply over the water-and-rail route. Respondents reply that the class rates from New York to North Adams were originally influenced by water-and-rail competition and that North Adams now has the benefit of a considerably lower class-rate scale from New York than generally prevails in New England.

The division accruing to the water lines from the 14-cent water-and-rail rate by way of Troy is 8.25 cents, and is said to be satisfactory to those lines. Protestant argues, therefore, that the test of the reasonableness of the joint water-and-rail rate is what would be a reasonable division to the Boston & Maine for the 48-mile haul from

Troy to North Adams. The question presented, however, is the reasonableness of the through rate as a whole, and the divisions received by participating carriers are not controlling in the determination of that question. The local rate over the steamer line from New York to Troy does not appear of record. The first-class rate of the Boston & Maine from Troy to North Adams is 19 cents; the second-class rate, 16 cents.

We find that respondents have justified the proposed cancellation of the commodity rates to North Adams and to the other points in question.

The suspension orders will therefore be vacated.

No. 7943.

OWEN M. BRUNER COMPANY ET AL.

v.

SOUTHERN RAILWAY COMPANY ET AL.

Submitted September 21, 1915. Decided July 6, 1916.

1. Claim for reparation on two carloads of lumber from Dooling, Ga., to Atlantic City, N. J., found to have been abandoned.
2. Carload shipment of lumber from Embree, S. C., to Trenton, N. J., found not to have been misrouted.
3. Carload shipment of lumber from Denton, N. C., to Wilmington, Del., found to have been misrouted and reparation awarded.

L. F. Koss for complainants.

Frank W. Gwathmey for Southern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are Owen M. Bruner Company, Denton Lumber Company, and Edisto River Lumber Company, corporations engaged in the lumber business, with their principal offices at Philadelphia, Pa., Ashboro, N. C., and Chicago, Ill., respectively. By complaint, filed April 26, 1915, they allege that defendants misrouted two carloads of lumber shipped from Dooling, Ga., to Atlantic City, N. J., in August, 1912; one carload of lumber shipped from Embree, formerly Edisto, S. C., to Trenton, N. J., in May, 1914; and one carload

of lumber shipped from Denton, N. C., to Wilmington, Del., in November, 1914. Reparation is asked.

The shipments from Dooling to Atlantic City were delivered in September, 1912. The claim based on these shipments was presented informally March 19, 1913, by complainant, Owen M. Bruner Company, and was considered on our informal docket. After correspondence, on March 16, 1914, the Owen M. Bruner Company was notified that the claim could not be adjusted informally, but failed to file a formal complaint thereafter until April 26, 1915. The formal complaint was not filed within two years after the cause of action accrued, nor within a reasonable time after notice that the claim could not be adjusted informally, and must be held to have been abandoned. *Rule 3 of Rules of Practice; Dillon Coal & Transfer Co. v. O. S. L. R. R. Co.*, 28 I. C. C., 91.

The shipment from Embree was delivered by the Edisto River Lumber Company to the Southern Railway at Embree on May 19, 1914. It weighed 36,300 pounds and was consigned to Seymour Y. Warner & Company of Trenton, routed by the shipper "Penna. R. R." The shipment from Denton weighed 57,220 pounds and was delivered to the Carolina & Yadkin River Railway at Denton by the Denton Lumber Company, November 24, 1914, consigned to the Peerless Lumber Company at Wilmington, routed by the shipper "P. R. R." No rates or junction points through which the shipments should move were shown in the bills of lading. When the shipment from Embree moved, the rates on lumber, in carloads, from that point to Trenton were 27.5 cents per 100 pounds over the Southern Railway and the lines of the Pennsylvania system by way of Potomac Yard, Va., and 23.5 cents per 100 pounds over the Southern Railway to Pinners Point, Va., New York, Philadelphia & Norfolk Railroad to Delmar, Del., and lines of the Pennsylvania system beyond. At the time the shipment from Denton moved, the rates on lumber, in carloads, from that point to Wilmington were 22 cents per 100 pounds over the Carolina & Yadkin River Railway and the Southern Railway to Potomac Yard and lines of the Pennsylvania system beyond, and 20 cents per 100 pounds over the Carolina & Yadkin River Railway and the Southern Railway to Pinners Point, the New York, Philadelphia & Norfolk Railroad to Delmar, and lines of the Pennsylvania system beyond. The shipments moved through Potomac Yard. Charges were collected on the shipment from Embree in the sum of \$96.20, at a rate of 26½ cents per 100 pounds, and there is an outstanding undercharge of \$3.63 on the shipment. Charges were collected on the shipment from Denton in the sum of \$125.88, at a rate of 22 cents per 100 pounds. The Edisto River Lumber Company and the Denton Lumber Company contend that the shipments should

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have moved through Pinners Point and that the Southern Railway willfully and negligently misrouted them.

If the Edisto River Lumber Company had given no routing instructions relative to the shipment from Embree the Southern Railway would have been obliged to forward the shipment over the route by which the lower rate applied, and, if consignor had inserted in the bill of lading the rate applicable through Pinners Point, it would have been the initial carrier's duty to inquire of the shipper what route was desired. But the carriage of the shipment to Potomac Yard and its delivery there to the Pennsylvania system lines complied with the only routing instructions shown in the bill of lading. As the Edisto River Lumber Company exercised its right to direct the routing and the shipment was handled in accordance with the instructions given, the shipment was not misrouted. *Trexler Lumber Co. v. S. Ry. Co.*, 39 I. C. C., 753.

The shipper's routing of the shipment from Denton was not complete, as there is no connection between the Carolina & Yadkin River Railway and the lines of the Pennsylvania system. It was the duty of the initial carrier to route the shipment over the cheapest reasonable available route consistent with the routing instructions specified by the shipper. The shipment was delivered by the Carolina & Yadkin River Railway, the initial carrier, to the Southern Railway, on billing showing routing "P. R. R." We find that this shipment was misrouted by the Carolina & Yadkin River Railway Company in that it failed to route the shipment by way of Pinners Point; that the Denton Lumber Company paid and bore the charges thereon and was damaged thereby to the extent of the difference between the charges collected and the charges which would have accrued if the shipment had moved through Pinners Point, and that it is entitled to reparation from the Carolina & Yadkin River Railway Company in the sum of \$11.44.

An appropriate order will be entered.

40 I. C. C.

No. 7861.
JOHN B. A. KERN & SONS
v.
**CHICAGO, MILWAUKEE & ST. PAUL RAILWAY
COMPANY ET AL.**

Submitted November 13, 1915. Decided July 6, 1916.

Following the principle applied in previously decided cases; *Held*, That the Chesapeake Western Railroad Company should permit the diversion or reconsignment of carload shipments of flour and feed, in transit from Milwaukee, Wis., to Bridgewater, Va., on the basis of the through rate from Milwaukee to Bridgewater, plus a maximum charge of \$2 for the extra services incident to the diversion or reconsignment, provided the contents of the car remain unchanged, no out of line haul is necessary, and the request is received before the arrival of a car at the original destination or within a reasonable time thereafter and before the car is set for delivery. Reparation awarded.

George A. Schroeder for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are John F. Kern and Adolph L. Kern, copartners, engaged in the flour-milling business at Milwaukee, Wis., under the firm name of John B. A. Kern & Sons. By complaint, filed March 27, 1915, they allege that unreasonable charges were collected by defendants for the transportation of a carload of flour and feed shipped from Milwaukee, consigned to Dayton, Va., but reconsigned in transit to Bridgewater, Va. Reparation is asked and the establishment by the Chesapeake Western Railroad Company of reasonable reconsigning rules for the future.

The shipment consisted of 9,800 pounds of flour and 36,270 pounds of feed, bran, and middlings, in sacks, and was forwarded from Milwaukee by the Chicago, Milwaukee & St. Paul Railway, January 22, 1915, reaching Dayton February 1, 1915. Two days before its arrival at Dayton the Chesapeake Western Railroad Company, the delivering carrier and hereinafter referred to as defendant, was asked to change the destination to Bridgewater. Defendant executed the order at Dayton. The through reshipping or proportional rate on flour and mill feed, in mixed carloads, from Milwaukee to Dayton was 17.5 cents per 100 pounds, minimum 40,000 pounds, composed of a rate

of 14.5 cents per 100 pounds from Milwaukee to Hagerstown, Md., and a differential of 3 cents per 100 pounds beyond. The differential was published as applicable to flour, and a differential of 2 cents per 100 pounds was named on mill feed, but under the rules to which the tariff was subject the rate on the highest rated article in the shipment applied. A rate of 5 cents per 100 pounds, minimum 35,000 pounds, applied locally from Dayton to Bridgewater. The charges due at these rates amounted to \$103.66, but only \$103.39 was collected, and the shipment was undercharged 27 cents. Bridgewater is on defendant's line, 3 miles beyond Dayton from Hagerstown, Md., and differentials applicable to Dayton also applied to Bridgewater. But the 17.5-cent rate applicable on this basis was not applicable to the complainants' shipment for the reason that defendant's tariffs made no provision for reconsignment. The defendant was not represented at the hearing herein, but stated in its answer that it has been its practice to reconsign cars upon its line without charge "when requests therefor are received in time to effect the reconsignment prior to the arrival of car at destination"; also that the diversion of complainants' shipment would have been effected, and "without requiring extra service," if defendant's agent at Dayton had sought the advice of the proper officials promptly.

In *Central Commercial Co. v. L. & N. R. R. Co.*, 27 I. C. C., 114; 33 I. C. C., 164, and numerous other cases we required carriers to provide reconsignment rules in their tariffs but permitted a reasonable charge to be made for the additional services incident to the reconsignment. Following the principles applied in such cases, we find that defendant should provide in its tariffs that shipments of flour and feed, in carloads, from Milwaukee to Dayton will be diverted or reconsigned at Dayton to Bridgewater on the basis of the through rate from Milwaukee to Bridgewater, plus a reasonable charge for the extra services performed incident to the diversion or reconsignment, provided the contents of the car remain unchanged, no out of line haul is necessary, and the request is received before the arrival of the car at Dayton, or within a reasonable time thereafter and before the car is set for delivery.

Defendant's answer indicates that no extra service would have been required in effecting the diversion of complainants' shipment, but certain additional expenses must necessarily have been incurred. Complainants contend that any charge in excess of \$2 per car would have been unreasonable and in *Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co.*, 15 I. C. C., 546, we found that \$2 per car was a reasonable charge for changing the destination of the shipments there involved when the change was made before or immediately after the arrival of the cars at their first destination and before they were set for delivery

and when no back haul or out of line haul was required. We find upon the facts of this case that \$2 per car would have been and for the future will be a reasonable maximum charge for the extra services performed incident to diversion or reconsignment at Dayton. We further find that the shipment was made as described; that defendant's failure to provide in its tariffs for diversion or reconsignment upon the basis herein found reasonable subjected complainants to unreasonable charges; that complainants paid and bore the charges and were damaged thereby and that they are entitled to reparation with interest.

The amount of reparation can not be determined on the present record. The 14.5-cent rate component to Hagerstown was established January 15, 1915, having been 13.7 cents for some time before. The tariffs publishing these proportional rates to Hagerstown authorized the application of the basing rates in effect on the date of the inbound movement of the grain to the outbound product of grain milled at Milwaukee, and complainants ask reparation on the basis of the through rate to Bridgewater, in effect prior to January 15, 1915. It is not established, however, that under the provisions of the tariff the shipment was entitled to the proportional rate in effect prior to that date. Complainants should, therefore, prepare a statement showing the date of movement of the shipment, points of origin and destination, car number and initials, route, weight, rate applied, charges collected and date of payment, and the amount of reparation due under our findings herein, which statement, together with a stipulation or other appropriate evidence establishing complainants' right, if any, to the application of the proportional rate in effect prior to January 15, 1915, should be submitted to the defendants for verification. Upon receipt of such a statement prepared by complainants and verified by defendant, we will consider entering an order awarding reparation.

With respect to its avowed practices as disclosed by its answer, defendant's attention is directed to the requirements of the act to regulate commerce, particularly those in section 6 thereof, to rule 10(a) and rule 74 of our Tariff Circular 18-A, and to the provisions of the Elkins act respecting the failure of common carriers subject to the act to publish their tariffs as therein required. Carriers subject to the act may not lawfully extend reconsignment without tariff authority. Rule 74 of Tariff Circular 18-A pertinently states that—

The privilege is of value to the shipper, and in order to avoid discrimination it is necessary for carrier that grants such privilege to publish in its tariff that fact, together with the conditions under which it may be used and the charge that will be made therefor. Such rules should be stated in terms that are not open to misconstruction.

An appropriate order will be entered.

No. 7735.¹
B. FRANKFELD & COMPANY
v.
NEW YORK CENTRAL RAILROAD COMPANY ET AL.

Submitted November 1, 1915. Decided June 26, 1916.

Refusal of defendants to provide cars specially equipped with hooks and racks for the transportation of chilled and frozen meats not found to be unreasonable or unduly prejudicial. Complaints dismissed.

Guggenheimer, Untermeyer & Marshall and *Abraham Benedict* for complainants.

Parker McCollister, Henry Wolf Biklé, Douglas Swift, and H. A. Taylor for defendants.

R. D. Rynder and F. H. Frederick for Swift & Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants in these proceedings are importers of and dealers in meats, consisting of beef, mutton, and lamb, produced in the Argentine Republic and imported through the port of New York. Their complaints, filed February 8, 1915, and February 27, 1915, respectively, are very similar in character and were accordingly consolidated. The defendants, trunk lines extending from New York City to the north and west, are charged with violation of the act in three particulars: 1, furnishing unclean cars; 2, failure to furnish suitable cars for the shipment of chilled meats; and 3, maintenance of an unreasonable and discriminatory rule fixing the minimum number of cars per float, entitling shippers to free floatage to and from vessels in New York harbor.

The meats imported by complainants are fresh, and for their preservation during transportation and pending consumption are either chilled or frozen, the former having a temperature of 29½ to 30½ degrees and the latter from 15 to 20 degrees Fahrenheit. Frozen meats may be piled in vessel or car and offer no peculiar difficulties in transportation, requiring only clean equipment and ordinary refrigeration. Chilled meats can not be piled, but must be suspended from hooks. The refrigerator cars owned by the larger American meat-packing companies, hereinafter referred to as the packers, are

¹ The proceeding also embraces complaint in No. 7735 (Sub-No. 1), *Alfred H. Benjamin v. Same.*

equipped with hooks which when in use depend from rails which sustain the car lading. Those cars are also provided with racks which prevent the meat, whether frozen or chilled, from coming into contact with the car floors, this or some similar protection being required by governmental regulation. The refrigerator cars owned by the defendant railway companies are not equipped with either rails or hooks, with the exception of about 140 cars owned by the New York Central, which are provided with rails only. There is also a difference in the appliances for refrigeration, the packers' cars having tanks for crushed ice and salt, while the railway refrigerator cars have only racks for lump ice.

The importation of fresh meat through New York commenced about three years ago, following the removal of the import duty on that commodity. The complainants have in part been supplied by the railway companies with packers' cars, but that supply is insufficient and irregular. There is some suggestion in the record that there has been a change of policy on the part of the railway companies, which formerly provided the packers' cars more freely than at present. Witnesses for complainants testified that in several instances packers' cars had been placed alongside vessels for loading with complainants' freight, but had been withdrawn before loading could be accomplished, the cars presumably being required by their owners. The American packers have plants in South America, and frequently import fresh meats on the same boats and in the same cargo with complainants' shipments. Packers' cars arriving from the west under load are usually returned immediately upon unloading and are not available for complainants' use.

To some extent the complainants have furnished hooks for use in such railway cars as are equipped with rails. The hooks cost from 9 to 20 cents each and 120 are required in loading a car. As consignees failed to return the hooks they were a loss to complainants.

The third ground of complaint resulted from a rule made effective by defendants on or about July 6, 1914, whereby free floatage to or from vessels would not be furnished by defendants for a less number of cars than six on a single float, the charge being \$9 for each car less than that number. Prior to that date there was no minimum and free floatage was performed for one or more cars. As the complainants very seldom had as many as six cars for shipment at any one time by one road they were forced under the new rule either to pay the tariff charge or to truck their freight from vessel to cars on track at an expense of from \$14 to \$48 per car greater than that of unloading from vessel to cars on float at ship side. It is unnecessary to dwell upon this feature of the complaint, as the defendants, excepting the Baltimore & Ohio, established a

joint arrangement, effective in August, 1915, subsequent to the hearing, whereby the Hoboken Shore Railroad Company, acting as agent for the defendants, assembles and distributes the cars at an expense to the shipper for floatage of \$4 or \$6 per car of 20,000 pounds, the rate depending upon the destination of the shipment. The shippers may still avail themselves of the six-car rule if they are in position to do so. Complainants were so far satisfied with this arrangement that upon brief they withdrew this specification of their complaint.

Owing to their inability to secure suitable cars and to the operation of the six-car minimum rule, complainants' business has been largely restricted to the territory reached by trucking. One complainant testified that 90 per cent of his importations were consumed in Greater New York; the other, 65 per cent. In the early stages of their business they shipped in large quantities to other eastern cities and as far west as Chicago, Milwaukee, and even Little Rock, Ark. At the time of the hearing they were receiving numerous inquiries from all parts of the United States but were unable to take orders under conditions then existing. To what extent this was due to the difficulties of the six-car rule, since remedied, is not shown. Chilled meats may safely be shipped in proper cars as far as Chicago and frozen meats to any part of the country. The former are in greater demand, being ready for use, whereas frozen meats require several days for thawing.

The complainants contend broadly that the respondent carriers are bound to furnish properly equipped cars for transportation of freight offered by the complainants. Should the service require increased investment or expense by the carriers, complainants admit the justness of commensurate compensation, which might involve an increase in rates. They suggest that the carriers may meet their obligations by distributing the packers' cars proportionately among shippers as if they were owned by the carriers themselves.

The obligation of carriers to provide equipment and their duty in the distribution of cars of private ownership were considered by us in the somewhat analogous case of *Pennsylvania Paraffine Works v. P. R. R. Co.*, 34 I. C. C., 179, in which we held that a sufficient number of tank cars must be provided by the defendant carrier for the transportation of complainant's normal shipments. The jurisdictional question involved in that case has been reviewed by the United States district court for the western district of Pennsylvania, which found "nothing in the law which confers upon the Commission power to compel a carrier to acquire facilities it does not possess or to acquire better facilities than those it possesses, not with the object of preventing discrimination and preferences, but in order

that the shipper may have larger, better, and perhaps more economical facilities." *Pennsylvania R. R. Co. v. United States*, 227 Fed., 911. The question is now before the Supreme Court of the United States on appeal. It is not necessary to await the final determination of our authority in order to dispose of the case now before us. In the case cited we found that the complainant's request was reasonable. The commodity moved in enormous tonnage, and almost universally in tank cars, some of which were owned by the carriers. The traffic was in no sense experimental. Here the traffic thus far developed is relatively small. During the past three years the complainants have imported about 35,000,000 pounds of chilled meats. The shipments of chilled beef by rail during the year 1914, as indicated by the incomplete statements of the complainants, amounted to about 6,000,000 pounds, or 300 minimum carloads. To what extent the volume of shipments was affected by the adverse transportation conditions described in the record can not be determined even approximately. Defendants testified that the cost of refrigerator cars equipped for the transportation of chilled meats would be from \$1,800 to \$2,000 per car, and that the cost of alterations in ordinary refrigerator cars necessary to fit them for such service would be at least \$800 per car. The complainants stated that owing to the uncertainties of future tariff legislation and to the unsettled conditions due to the war, both affecting the permanency of their business, they would not now feel warranted in providing their own cars, as the packers have done. They further testified that frozen meats have become popular in England, and may eventually come into favor in the United States. Such meats may be safely transported in ordinary refrigerator cars. Upon this showing we would not feel warranted, irrespective of jurisdictional authority, in requiring the defendants to provide the special equipment requested for the transportation of chilled meats. See *S. W. Missouri Millers Club v. St. L. & S. F. R. R. Co.*, 26 I. C. C., 245, and *Western Classification Case*, 25 I. C. C., 442, 494.

It should be remarked that the record shows no undue prejudice to the traffic of the complainants. It would be difficult to name a more direct or effective method of discrimination than that of preference in providing equipment or in distributing it among shippers.

Our views regarding the distribution of private cars for the use of which the carriers pay compensation were expressed in the decision in the *Pennsylvania Paraffine Works Case*, *supra*. Whether the doctrine there laid down is applicable in full force to the present case can not be determined from this record. The complaints charged no discrimination in the distribution of packers' cars. The statements of complainants in this connection were general and indefinite

in character, and the defendants were within their rights in ignoring this testimony. Such shipments of chilled beef as complainants have made during the past three years have moved for the most part in packers' cars. Such cars are still being furnished, although not in desired numbers. Whether this is due to preference in their distribution or to inadequacy in the number of cars available for shipment of the tonnage offered at the time, including that of the owners of the cars, is not shown.

At the hearing the complainants also offered testimony to the effect that many of the cars furnished by the defendants are not properly cleaned, whereby the complainants are subjected to expense and their shipments delayed. This also is a matter which does not appear in either of the complaints with sufficient definiteness to place the carriers upon their defense.

The complaints will therefore be dismissed, but without prejudice to the right of complainants to bring before us upon a complete record any information regarding present practices of defendants or present conditions which in the opinion of complainants require remedy and which are cognizable by us.

McCHORD, *Commissioner*, dissenting:

I can not concur in the disposition made of this case.

The defendants not only hold themselves out to carry dressed meats generally, but specifically publish carload ratings on frozen and chilled Argentine meat westbound from ship side at New York. Holding themselves out as common carriers of dressed meat, the common law charges them with the duty of providing safe and suitable equipment in which to transport this commodity. See Hutchinson on Carriers, third edition, section 497. *Railroad Company v. Pratt*, 22 Wall., 123, 133. It is the contention of the defendants that they are under no duty to furnish complainant with cars equipped as required, because they have no cars so equipped and because under the common law as they construe it the duty to furnish cars is limited to the facilities owned by a carrier, and there is no obligation upon it to acquire other facilities which might be necessary for a particular kind of traffic. This, however, is not a correct statement of the law. In Hutchinson on Carriers, *supra*, section 495, it is said:

The first duty of the common carrier who holds himself out to the public as ready to engage in the carrying business is, of course, to provide himself with reasonable facilities and appliances for the transportation of such goods as he holds himself out as ready to undertake to carry.

This principle of the common law has never been changed or modified. In the marvelous development of commerce and industry,
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however, it has come about that common carriers in responding to commercial necessities, just as in the present case, now hold themselves out to transport commodities which previously no one thought could be transported as a practical matter and which may not be carried in the sort of equipment commonly employed. In such instances the same rule of law is applied and common carriers have been held liable for failure to furnish refrigerator cars suitable for the protection of perishable freight received for transportation. See Hutchinson on Carriers, *supra*, section 505.

It is further urged that if it be the duty under the common law to furnish suitable equipment the obligation of the carrier to furnish special cars is dependent upon the amount of traffic offered by the shipper requesting such equipment. The majority report adopts this view. This contention, however, is clearly unsound, since under the common-law rule here invoked the only question is whether the carrier holds itself out to carry the particular commodity. If it does, the duty attaches. The carrier may not hold itself out to carry freight and only accept that kind of freight if a large quantity is offered when in the offer to carry no limitation is made as to the amount that must be offered. The refusal to furnish cars in which to transport the dressed meat of complainants after publishing a carload rate for the transportation of dressed meat is tantamount to a refusal to accept complainants' shipments for carriage. There is no duty upon a shipper under the act or at common law to furnish the car in which his commodity must be shipped. The holding out of the defendants in their tariffs is not limited to the transportation of dressed meats loaded in cars belonging to shippers. For the defendants to publish rates applicable only to the movement in cars furnished by shippers would undoubtedly be unlawful discrimination under the principle of the *Train Lot Rate Cases*, *Anaconda Copper Mining Co. v. C. & E. R. R. Co.*, 19 I. C. C., 592, 596; *Wells Lumber Co. v. C., M. & St. P. Ry. Co.*, 38 I. C. C., 464, because only certain of the larger shippers could avail themselves of the transportation and the ordinary shipper, who does not own cars, would not be able to compete with them. This discrimination, however, is accomplished as a result of the conclusion reached in the majority opinion. Although holding themselves out unqualifiedly in their tariffs as common carriers of dressed meat, the decision in this case in effect excuses these defendants from the discharge of their duty as common carriers to transport shipments of dressed meat offered by complainants. At the same time the rates are permitted to remain in effect, making it possible for the larger American meat packers, who own their own cars, to import frozen and chilled meats from Argentina, and to secure markets for those meats

at which complainants can not compete. Thus the decision in this case permits indirectly a result which the parties themselves could not lawfully accomplish.

The complainants, as noted in the majority opinion, do not insist that properly equipped refrigerator cars be furnished them under the same charge as is made to shippers who supply their own cars. They are willing to pay the reasonable charge for the extra service and expense involved upon the carrier in furnishing the particular type of car needed.

It is further contended by the defendants that the obligation of the common law is limited by the following provision of section 1 of the act:

The term "transportation" shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or any contract express or implied for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this act to provide and furnish such transportation upon reasonable request therefor.

It is argued that the duty to furnish equipment for freight which the carrier holds itself out to carry depends under this section of the act upon the reasonableness of the request therefor. In support of this position the volume of the traffic of these complainants is referred to and relied upon as showing that the request is unreasonable.

Under the quoted section it is the duty of common carriers to provide cars suitable to transport particular freight which the carriers have not held themselves out to carry, if the request for such equipment as may be required is reasonable. This can not be construed into a limitation of the common-law duty of these carriers. We are not asked in this case to determine whether it is reasonable to require defendants serving the port of New York to publish carload rates on import frozen or chilled Argentine dressed meat and to require them accordingly to furnish cars suitable to perform this transportation. The defendants have determined for themselves the reasonableness or the practicability of carrying the commodity in question, have published specific rates, and have held themselves out without limitation to engage in the transportation such as complainants offer. The distinction is plain. The limitation as to the reasonableness of the request can only apply in connection with the duty to furnish cars for the transportation of freight which the particular carrier has not previously held itself out to carry. As to such new service, of course, the request must be reasonable. Such is the basis of the decision in *Protection of Potato Shipments in Winter*, 26 I. C. C., 681, where the carriers by tariff provisions were attempting to withhold themselves from the transportation of potatoes during certain seasons of the

40 I. C. C.

year except when shippers supplied the means to protect against freezing. We said, at page 684:

Under these circumstances we are inclined to think that the traffic here is large enough not only to warrant the carriers in preparing for it in some such manner, but large enough and permanent enough to require them under the law to *offer such a service* to the shippers.

This case, and the other cases in which we have required carriers to furnish heater cars, are improperly cited by defendants in support of their contentions. In the cited case the carriers had not held themselves out to carry potatoes at seasons of the year requiring protection, but the request appearing reasonable we required them to hold themselves out to engage in this transportation and to furnish the kind of cars required.

Even if this contention of the defendants could be accepted as sound, the reasonableness of any request could not properly be based on the showing of the volume of traffic offered by one or two shippers, but must depend upon the whole volume of such traffic on the system of a particular carrier. The majority opinion calls attention to the fact that during the past three years the complainants have imported 35,000,000 pounds of chilled meats, but that during the year 1914 they shipped from New York only 300 minimum carloads. One of the complainants sold 90 per cent of its importations, the other 65 per cent, in New York City and vicinity where motor truck transportation was possible, and the record fairly indicates that if adequate equipment had been furnished by the carriers a substantially larger part of those importations would have been transported by rail to other markets. No account is taken of the volume of movement of dressed meats and other commodities requiring refrigeration in which the equipment of defendants, if provided, could be employed. It appears from the record that the American meat packers are also large importers of Argentine dressed meats, importing the commodity in much larger quantities than the complainants. Nor can such inquiry be limited, as is done in the majority opinion, to imported dressed meats. The same kind of cars required to transport imported dressed meats may be used to transport domestic dressed meats. The defendants reach Chicago as well as New York, and it is well understood that the largest movement of dressed meat in this country is out of Chicago. Nor does it appear that any different kind of car is required to move the meat imported from Argentina by the large American meat packers than the car required by complainants.

The majority opinion also seems to overlook the fact that where it is the duty of the carrier to furnish transportation it is the right of the carrier to furnish same. *A., T. & S. F. Ry. Co. v. U. S.*,
40 L. C. C.

232 U. S., 199. Applying this principle, if defendants were required to provide cars suitable for the movement of imported dressed meats, as I deem the common law requires, these carriers could lawfully insist upon hauling the domestic dressed meat, as well as the imported dressed meat, in their own equipment, and could refuse to accept shipment in the cars of shippers on which they are required to pay compensation to the shipper. The fact that the importation of Argentine meat has been possible only within the last three years, due to the removal of the import duty upon that commodity, and the fact that future tariff legislation is uncertain, as recited in the majority opinion, are not persuasive. Loss of this import traffic would not seriously affect defendants, for if they acquire meat refrigerator cars they would have the right to use these cars in the movement of domestic dressed meats offered for transportation anywhere on their lines, to the exclusion of the cars of the American meat packers.

Even if it be assumed that defendants' contention is sound, in my view of the matter the reasonableness of complainants' request has been clearly established.

The common law requires the furnishing of a car that is fit or suitable to transport the freight which the carrier holds itself out to carry. Hutchinson on Carriers, *supra*, section 505, says:

If the goods are of such a nature as to require for their protection some other kind of car than that required for ordinary goods, and cars adapted to the necessity are known and in customary use by the carriers, it is the duty of the carrier where he accepts the goods to provide such cars for their carriage.

It is conceded that to properly protect chilled meat shipped in carloads it must be hung in the car. Under the requirements of the bureau of animal industry of the Department of Agriculture dressed meats can not be piled upon the floor of the car, so that it is necessary in connection with the transportation of frozen meat, which may be carried safely piled in an ordinary refrigerator car, to have the car equipped with a false floor or racks. Cars adapted to the requirements of chilled meat are well known and in daily use by the carriers. These cars are equipped with rails supporting hooks upon which the meat is hung. The defendants further contend, however, that the rails and hooks are in lieu of packing, being necessary to put the commodity in shape for transportation and that they bear such an analogy to sticks used in connection with lumber shipments that the same treatment should be accorded, namely, that it should be held that the shipper must supply them. Sticks used in connection with the shipment of lumber on open cars have never been considered a part of the car. That these defendants, however, consider these

fixtures for meat refrigerator cars part of the cars is indicated by this classification provision covering the return of empty refrigerator cars adapted to the transportation of dressed meats:

Meat hooks and racks in individual refrigerator cars may be returned free to original shipping point in territory A, provided they are returned as part of and treated the same as the empty car without waybilling, no bills of lading or receipts issued, and no risks or liabilities assumed therefor. Meat hooks or racks removed from refrigerator cars for carriers' convenience and for the purpose of utilizing return loaded movement of equipment may be returned free via the route originally shipped over. When said articles are not returned as provided above, the rate named in the official classification will govern. Hosmer's exceptions to official classification, item 1395.

The duty of the carriers to furnish grain doors in connection with the shipment of bulk grain has never been questioned. *New York Shippers' Protective Asso. v. N. Y. C. & H. R. R. Co.*, 30 I. C. C., 437; *Farmers' Cooperative Asso. v. C., B. & Q. R. R. Co.*, 34 I. C. C., 60.

It must follow that a refrigerator car is not suitable for the transportation of dressed meats unless it is equipped with racks or hooks, or both. Under the tariffs of these defendants in which they hold themselves out to carry frozen and chilled meats, I am of opinion that it is their duty to furnish refrigerator cars properly equipped to perform the transportation for which their rates are published.

40 I. C. C.

No. 6885.
BOSTON & MAINE BOAT LINES.

Submitted March 31, 1916. Decided July 3, 1916.

The Boston & Maine Railroad, to the extent shown in the report, does or may compete with its steamers on Lake Winnepesaukee and Lake Memphremagog within the meaning of the act. But upon the showing made it is *Held*, That the water services in question are operated in the interest of the public, are of advantage to the convenience and commerce of the people, and their continued operation will neither exclude, prevent, nor reduce competition, and should be permitted.

W. A. Cole for Boston & Maine Railroad.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

In due course and pursuant to the requirements of section 5 of the act to regulate commerce, as amended, the Boston & Maine Railroad filed this application for permission to continue, after July 1, 1914, to operate the steamer *Mount Washington* on Lake Winnepesaukee, in the state of New Hampshire. Largely through the efforts of the petitioner many summer cottages have been built in the country bordering on this lake, which is about 30 miles long; and it is to serve this summer population that the steamer was built and is in commission from June 20 to September 20 of each year. Being unable, because of its size, to land at all the wharves, the steamer serves but 6 of the 32 landings on the lake; the other landings are reached by smaller independently owned boats, to which we shall later refer.

The communities served by the *Mount Washington* are Wolfboro, with a population of 2,500; Centre Harbor with 500 residents; Alton Bay with 300; and Weirs, with a summer population of from 1,000 to 2,000 people, but no winter population. It is understood also that there are summer cottages on Bear Island and Long Island. The steamer makes one round trip in the morning from Centre Harbor to Weirs, touching at Bear Island, and two round trips about the lake each day. Fifty-five per cent of its passenger traffic comes from Weirs landing and 35 per cent from Alton Bay. The railroad reaches but three points touched by the boat, Alton Bay, Weirs, and Wolfboro; the rail route between those points is very circuitous and is said to be used only when the steamer is not in operation. While the

fare on the steamer is generally a flat rate of 75 cents, the rail rates to and from landings on the lake are on the basis of 2½ cents a mile without regard to the boat fares. The rail fare, for example, between Weirs and Alton Bay is 55 cents, while the steamer fare is 75 cents. The operation of the boat is for the convenience of tourists, and the receipts from freight are but 5 per cent of its total revenues. Generally speaking, the through fares and through freight rates to points on the lake are based on the local fares or rates to and from the interchange landings.

Two other boat lines, both independently owned and each serving 13 landings, ply on the lake. They are the Winnebepesaukee Transportation Company and the *Uncle Sam*, the latter being a small gasoline motor boat. Although, with the exception of Weirs and Long Island, no landings are served by any two boat lines, there is no express agreement on the part of the other boats that they will not touch at the landings of the petitioner. Through tickets to points on the lake, except those reached by the *Mount Washington*, are sold in connection with the Winnebepesaukee Transportation Company. The wharf at Weirs belongs to the petitioner and is the point of interchange between the railroad and the three boat lines. As the through passenger fares are all made on combination, a passenger, without subjecting himself to charges in excess of the through rate, may purchase a ticket to the wharf and then purchase a ticket of any of the boat lines; or, if having purchased a through ticket for use on the petitioner's boat he elects upon his arrival at Weirs to use a different boat line, the railroad will refund the amount paid for the boat ticket.

The *Mount Washington*, with a gross tonnage of 700 tons and a capacity for 1,000 passengers, is the largest boat operating on the lake and because of its size is preferred by many tourists. It was built in 1872 for the Boston & Maine and rebuilt in 1893, and it is estimated that it would cost between \$100,000 and \$150,000 to replace it to-day. The gross revenue from its operation in 1911 was \$16,588.57, of which \$12,764 was for passengers and but \$356.45 for freight; in 1914 the passenger revenue was \$10,855, and freight earnings \$580.95; from 1911 to 1915 the boat was operated at a loss of more than \$6,000, but that includes \$15,000 for overhauling in 1915. As explained by its witness, the Boston & Maine regards the lake more of an asset as a tourist center than as a "money getter for the steamer plying on the lake." The petitioner, as a matter of fact, has endeavored to sell the steamer, and is still willing to do so, but it insists on a guaranty that the service to be rendered the cottages will be maintained at its present standard of efficiency.

The Boston & Maine also owns indirectly the *Lady of the Lake*, a vessel of 607 gross tons, operating on Lake Memphremagog, which is about 30 miles long and is situated partly in the state of Vermont and partly in the province of Quebec. The legal title to this boat, which has a Canadian registry and touches at but one port in the United States, is in the name of a former general manager of the petitioner, and for these reasons, as stated at the hearing, no application for permission to continue the operation of the boat after July 1, 1914, was filed prior to that date. On February 4, 1916, however, an application was made by the petitioner for permission to amend its original application so as to include its water service on this lake. The application was granted and the facts relating to the operation of this boat are now before us. It is suggested that the application is too late; but under the circumstances we shall proceed to an examination of the facts disclosed of record without being understood as establishing by this course any precedent on the question of our jurisdiction to enter an order upon an application filed after July 1, 1914. The service is operated only from June to October, and the only port in the United States touched by the steamer is Newport, with a population of 2,000 people. The earnings of the steamer are largely derived from its passenger traffic, the freight earnings being almost negligible. In 1914 the passenger earnings were \$2,748.87, and the freight earnings \$53.66. The boat was built in 1867 and the repair bills are heavy; in 1912, for instance, repairs to the steamer cost \$2,303.06, and the gross earnings during that year were but \$3,436.08. The total revenue in 1915 was only \$2,314.89. As a matter of fact the boat does not make operating expenses, and the loss due to operation from 1911 to 1915 was in excess of \$16,000. In making through fares to and from points on the lake the local fare of the steamship company is used.

The Boston & Maine, in connection with the Canadian Pacific, publishes a joint fare of \$1.75 from Newport to Magog, at the head of the lake in Canada, the rail distance between those points being 59 miles. The distance by water between Newport and Magog is approximately 30 miles and the boat fare is 85 cents. There is a competitive company on the lake, the Memphremagog Navigation Company, which also serves Newport. No request has been made upon the petitioner for through routes and joint fares in connection with that company, but it was stated at the hearing that if made such a request would be granted. The Boston & Maine has endeavored to sell the steamer and would do so now if a purchaser could be found.

The jurisdiction of the Commission under section 5 of the act to regulate commerce, as amended, is not denied by the petitioner.

To the extent shown it is clear that the petitioner does or may compete with each of the steamer lines here under consideration. But it is apparent from the record that so long as their respective operations remain as at present the steamers of the petitioner on Lakes Winnepesaukee and Memphremagog are being operated in the interest of the public and are of advantage to the convenience and commerce of the people, and their continued operation and ownership will neither exclude, prevent, nor reduce competition on the routes by water under consideration. The application should therefore be granted.

An order will be entered accordingly.

INVESTIGATION AND SUSPENSION DOCKET No. 733.
SEWER PIPE FROM JACKSONVILLE, FLA.

PORTIONS OF FOURTH SECTION APPLICATIONS Nos.
703 AND 1573.

Submitted May 10, 1916. Decided July 6, 1916.

1. Proposed increased proportional rates for the transportation of interstate carload shipments of sewer pipe from Jacksonville, Fla., to Tampa, Fla., and certain points taking Tampa rates, found to have been justified; proposed rate to Lakeland, Fla., not found justified.
2. Fourth section applications in which authority is sought to continue proportional rates on interstate shipments of sewer pipe from Jacksonville to Tampa lower than the rates contemporaneously applicable on like traffic to intermediate points, denied.

R. Walton Moore and Frank W. Gwathmey for respondents.
B. R. Shepherd for protestants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By schedules, filed to take effect October 27, 1915, respondents proposed increased proportional rates from Jacksonville to Lakeland and Tampa, Fla., and near-by points taking Tampa rates, applicable to interstate carload shipments of sewer pipe, from points north of Jacksonville. Upon protest by the Tampa Board of Trade, dealers

in sewer pipe at Tampa, and manufacturers of sewer pipe at Chattanooga, Tenn., Birmingham, Ala., and certain points in Georgia, the schedules were suspended until February 24, 1916, and later until August 24, 1916.

Tampa is 212 miles from Jacksonville over the Seaboard Air Line Railway; 240 miles over the Atlantic Coast Line Railroad. Lakeland is intermediate to Tampa, 207 miles from Jacksonville over the Atlantic Coast Line, the only carrier serving Lakeland. It is 33 miles east of Tampa. All rates on sewer pipe, in carloads, from interstate points north of Jacksonville to the points of destination are made by combination on Jacksonville. Respondents proposed to increase the proportional rates to Tampa and points taking the same rates from 6 cents per 100 pounds to 12 cents; the rates to Lakeland from 13 cents to 15.5 cents. The evidence is devoted principally to the rate proposed to Tampa. All rates are stated in cents per 100 pounds.

Respondents inherited the 6-cent rate to Tampa from their predecessors more than 15 years ago. They say that they have felt for some time that it should be increased, but have realized that its increase to the proper basis would merely encourage the reshipment of sewer pipe, originating at points without the state, from Jacksonville to Tampa at the intrastate rate of $9\frac{1}{2}$ cents, which rate respondents could not increase without the authority of the Florida Railroad Commission. Authority to readjust the intrastate rates was obtained on April 21, 1915. An intrastate rate of 16 cents was established, whereupon the tariffs here under suspension were filed. Sewer pipe, in carloads, generally takes one-half of class A in Florida, and the former $9\frac{1}{2}$ -cent intrastate rate was one-half of the class A rate from Jacksonville to Tampa. The present Florida class A rate from Jacksonville to Tampa is 32 cents, but the present proportional class A rate is 19 cents, the former Florida class A rate.

A witness for the Atlantic Coast Line testified that the 6-cent rate is unprofitable and that it is one of the lowest rates, if not the lowest, in the United States, distance and traffic density considered. By the short route the 6-cent rate earns 5.7 mills per ton-mile, and 7.3 cents per car-mile, at an average loading of 26,000 pounds. The 12-cent rate proposed would earn 11.3 mills per ton-mile and 14.7 cents per car-mile. Comparative rates on interstate shipments of sewer pipe from Jacksonville to points in Florida are shown on the following page.

From Jacksonville (from beyond) to—	Distance.	Rates.	Ton mil : earning :
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Ocala, Fla.....	125	10.5	16.8
Bartow, Fla.....	209	15.5	14.8
Leesburg, Fla.....	159	12.0	15.1
Kissimmee, Fla.....	164	13.5	16.5
Wauchula, Fla.....	234	17.0	14.5
Drexel, Fla.....	202	15.5	15.3
New Smyrna, Fla.....	125	11.5	18.4
Melbourne, Fla.....	194	15.0	15.5
Titusville, Fla.....	154	13.0	16.9
Grant, Fla.....	206	15.5	15.0
Roseland, Fla.....	212	16.0	15.1
Fort Pierce, Fla.....	242	17.5	14.5
St. Lucie, Fla.....	238	17.0	14.3

Comparative rates applicable in other territories also are cited, of which the following are typical:

	Distance.	Rates.	Ton-mile earnings.
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Chattanooga, Tenn., to—			
Columbiana, Ala.....	203	14.0	13.8
Bristol, Tenn.....	242	12.0	9.9
Green Mountain, N. C.....	257	18.5	15.0
Birmingham, Ala., to—			
Athens, Tenn.....	199	13.0	13.1
Holly Springs, Miss.....	206	11.0	10.7
Harriman, Tenn.....	223	16.0	14.3
Macon, Ga., to Clinton, S. C.....	214	11.9	11.1
Rome, Ga., to—			
Anderson, S. C.....	218	13.1	12.0
Greenwood, S. C.....	227	12.9	11.4
Clinton, S. C.....	254	13.9	10.9

Many of these rates involve hauls over more than one line. The rates in controversy are for one-line hauls.

Respondents urge that the proposed rates properly are higher than some of the rates cited in comparison because of the relatively meager traffic in Florida. The average ton-mile revenue on all traffic of many of the carriers in the territories where the latter apply is greater than respondents' average ton-mile revenue in Florida. *Fla. Frt. & Veg. Shprs. Protect. Asso. v. A. C. L. R. R. Co.*, 14 I. C. C., 476, is referred to, in which we said:

The shape and location of the state of Florida is such that these railroads which handle this traffic from the point of production up to the base point necessarily do but a limited business. They extend south considerable distances through a sparsely settled country which neither originates nor consumes a considerable amount of traffic. Some of them reach the seacoast, but none of them connect or can connect with railroads leading beyond, and the amount of through business handled is extremely light.

Rates on other low-grade commodities are quoted in support of the proposed rates. Illustrative carload proportional rates from Jacksonville to Tampa are: 9½ cents on draintile; 9 cents on hollow fireproof building tile; and 6 cents on common brick. The

minimum weight on sewer pipe is 25,000 pounds and the shipments seldom weigh more than 26,000 or 27,000 pounds. The loading of the other low-grade commodities named ranges from 40,000 to 50,000 pounds.

Certain of protestants concede the Jacksonville-Tampa proportional rate to be relatively low. They agree that respondents should be allowed to increase to 8 cents their rate from Jacksonville to Tampa, but oppose the proposed 12-cent rate. Protestants urge that respondents' comparisons with rates on sewer pipe in other territories are improperly drawn; that those rates are local or joint rates from and to producing and consuming territories while the rates involved are proportional rates and should be on a lower basis; and that the comparisons should include the total through rates from producing points to final destinations based on the proportional rates from Jacksonville as a component. The following comparisons on this basis are submitted:

	Distance.	Present—		Proposed—	
		Rates.	Ton-mile earnings.	Rates.	Ton-mile earnings.
To Tampa from—	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>	<i>Mills.</i>
Macon, Ga.....	417	15.0	7.19	21.0	10.07
Stevens Pottery, Ga.....	446	15.0	6.73	21.0	9.42
Columbus, Ga.....	495	16.0	6.46	22.0	8.80
Augusta, Ga.....	544	15.2	5.59	21.2	7.79
Rome, Ga.....	582	17.0	5.84	23.0	7.90
Chattanooga, Tenn.....	642	18.0	5.61	24.0	7.48
Birmingham, Ala.....	645	18.0	5.58	24.0	7.44
From Chattanooga, Tenn., to—					
Jackson, Miss.....	392	13.0	6.63	.....	.....
Mobile, Ala.....	413	13.0	6.3	.....	.....
Charleston, S. C.....	446	12.0	5.38	.....	.....
Jacksonville, Fla.....	468	12.0	5.13	.....	.....
Wilmington, N. C.....	567	15.75	5.56	.....	.....
Norfolk, Va.....	696	16.0	5.03	.....	.....

Protestants urge that the cancellation of the arrangement which allowed free transportation of 1,000 pounds dunnage in connection with carloads of sewer pipe has resulted in an increase in rates which helps to make the proposed rates excessive. Some time ago this amount of dunnage was transported free, but later the dunnage allowance was reduced to 500 pounds, and in August, 1915, was canceled entirely. One of the protestants regularly uses from 1,000 pounds to 1,500 pounds dunnage on which the rate applicable to sewer pipe is paid.

Portions of Fourth Section Applications No. 703, filed by the Atlantic Coast Line Railroad Company, and No. 1573, filed by the Seaboard Air Line Railway, in which authority is sought to continue rates on interstate shipments of sewer pipe from Jacksonville to Tampa, Port Tampa, and Ybor City, lower than the rates contemporaneous with the proposed rates.

aneously applicable on like traffic to intermediate points, were heard with the complaint.

The present rates to the intermediate points exceed the rates to Tampa and related points named by amounts ranging from one-half cent to 10 cents. The rate to Lakeland exceeds the rate to Tampa by 7 cents. The proposed rate to Tampa and kindred points would remove the fourth section departures at all points on the Atlantic Coast Line from Buffalo Bluff, Fla., the first station beyond Jacksonville, to Maitland, Fla., inclusive, but the rates to all points beyond Maitland would exceed the proposed rate to Tampa by from one-half cent to 4 cents, rendering the rate to Lakeland $3\frac{1}{2}$ cents in excess of the rate to Tampa. The rates to intermediate points on the Seaboard Air Line exceed the rates to Tampa by from one-half cent to $9\frac{1}{2}$ cents, and the proposed rate would remove the fourth section departures at all points from Maxville, Fla., the first station beyond Jacksonville, to Edenfield, Fla., inclusive, leaving discrepancies ranging from one-half cent to $3\frac{1}{2}$ cents at the remaining points.

Respondents rely upon alleged water competition to justify the fourth section departures. Sewer pipe is not well adapted to such transportation on account of its susceptibility to breakage in transit, especially when transferred from cars to vessels, or vice versa, and does not often move by water. We said in *Fourth Section Application 542 et seq.*, 25 I. C. C., 50-61:

To the extent that * * * water competition justifies departures from the fourth section at and from that point (Memphis), relief should be granted, but this Commission can not, upon the mere suggestion that this is a water competitive point, without further showing, grant unlimited relief from the rule of the fourth section.

The evidence relative to water competition is too indefinite in this case to justify the existing disparities.

The proposed rates to Tampa and points taking Tampa rates have been justified, and the order of suspension as to them will be vacated. The applications for relief from the long-and-short-haul rule of the fourth section will be denied. The rate to Lakeland, an intermediate point, will thus be reduced.

Appropriate orders will be entered.

No. 6207.¹
GRAHAM & GILA COUNTY TRAFFIC ASSOCIATION
v.
ARIZONA EASTERN RAILROAD COMPANY ET AL.

Submitted November 6, 1914. Decided July 7, 1916.

The complaints attack as unreasonable the rates on certain commodities from points in California to points on the Globe division of the Arizona Eastern Railroad in Arizona, and also the class and commodity rates from certain eastern group territories to the same destinations. After the complaints were filed the carriers published reduced rates from the east which resulted in reductions to the destination points here involved. On the facts of record, *Held*:

1. The rates from California, and those from the east as now in effect, are not shown to be unreasonable.
2. The portion of the Southern Pacific Company's Fourth Section Application No 1161 by which authority is sought to continue rates on high explosives from points in California to El Paso, Tex., which are lower than rates contemporaneously applicable on the same commodity to intermediate points, granted.

F. A. Jones and *G. J. Stoneman* for complainant in No. 6207 and No. 6208.

E. A. Brown for Arizona Corporation Commission in No. 6207.

F. A. Jones for complainants in No. 6255.

F. H. Wood for Southern Pacific system.

REPORT OF THE COMMISSION.

MoCHORD, *Commissioner*:

These cases involve related matters and will be disposed of in one report. The complaint in No. 6207 alleges that defendants' rates for the transportation of certain commodities from San Francisco, Los Angeles, and other points in the state of California to points on the Globe division of the Arizona Eastern Railroad in the state of Arizona are unreasonable and unjustly discriminatory in violation of sections 1, 2, 3, and 4 of the act. Refrigeration charges on shipments of fruits

¹ The proceeding also embraces complaints in—No. 6208, Graham & Gila County Traffic Association v. Arizona Eastern Railroad Company et al.; Fourth Section Applications Nos. 1120, 1220, 2060, 3732, and 4621; No. 6255, Solomon-Wickersham Company v. Same; No. 6255 (Sub-No. 1), Dealers Ice & Cold Storage Company v. Same; No. 6255 (Sub-No. 2), Sld F. Mauk Produce Company v. Same; No. 6255 (Sub-No. 3), Miami Commercial Company v. Same; No. 6255 (Sub-No. 4), Old Dominion Commercial Company v. Same; No. 6255 (Sub-No. 5), Olney Hardware Company v. Same; No. 6255 (Sub-No. 6), Globe Hardware Company v. Same; No. 6255 (Sub-No. 7), W. W. Brookner Company v. Same; and Fourth Section Application No. 1161.

and vegetables are also attacked. No. 6208 involves class and commodity rates from the east to the same Arizona points. In No. 6255 and Sub-Nos. 1 to 7, inclusive, claims for reparation, based on Nos. 6207 and 6208 are presented.

In No. 6207 the rates attacked are generally combinations on Bowie, Ariz., the junction point between the Southern Pacific and Arizona Eastern lines, 197 miles west of El Paso, Tex. The charge of discrimination is in general terms and does not set forth any facts upon which discrimination under section 2 is claimed, nor is there any designation of individuals, organizations, localities, or traffic accorded undue preference or advantage to the prejudice of any of the members of the complainant association contrary to section 3. All evidence intended to show discrimination was objected to at the hearing on the ground that defendants had not been put upon notice of any specific claim of that character. The Commission has several times held that questions of unjust discrimination under section 2, or of undue preference or prejudice under section 3, can not be properly considered in cases where complainants have failed to allege any particular violation of the law in these respects. *Stuarts Draft Milling Co. v. S. Ry. Co.*, 31 I. C. C., 623; *United States Leather Co. v. Southern Ry. Co.*, 21 I. C. C., 323, 324.

While there is a general allegation that the rates in question are unjustly discriminatory, there is no attempt to point out the character of the alleged discrimination, nor is there any prayer for the removal of any discrimination. Under these conditions we hold that the objections by defendants to the evidence offered on this subject were well taken. No question of unjust discrimination under section 2, or of undue preference or prejudice under section 3, is properly raised by the record, and we are confined to the question of unreasonableness in the rates under attack.

The Globe division of the Arizona Eastern extends from Bowie to Miami, Ariz., a distance of 134 miles. The section of country served is chiefly a mining center, and outbound traffic consists principally of products of the mines. The Gila Valley through which the line runs is partly under irrigation and produces hay, grain, and live stock in limited quantities, which furnish some outbound tonnage. Articles shipped from California consist chiefly of canned goods, potatoes, fresh and dried fruits, sugar, beans, salted or pickled fish, burlap bags, crude oil, refined oil, high explosives, etc. Numerous other articles are named in the complaint, but those mentioned are fairly representative of the kinds of traffic involved. The rates on oil from California to all points in Arizona are involved in *Pacific Creamery Co. v. S. P. Co.*, 29 I. C. C., 405; 34 I. C. C., 586.

Globe is 124 miles from Bowie and is here treated as a representative destination point. Rates are stated in cents per 100 pounds. From Los Angeles the distance is 617 miles to Bowie and 741 miles to Globe. To El Paso, Tex., the distance is 814 miles. Rates to Globe are generally combinations on Bowie made up of commodity rates to Bowie and class rates beyond. The class rates from Bowie to Globe are as follows:

Class.....	1	2	3	4	5	A	B	C	D	E
Rate.....	70	60	49	44	40	40	28	21	18	14

The following table shows the combinations on the commodities named therein from Los Angeles to Globe, together with rates on the same commodities from Los Angeles to Bowie and El Paso, respectively, and is illustrative of the situation as to other commodities:

Commodities.	Rate to Globe (741 miles).	Rate to Bowie (617 miles).	Rate to El Paso (814 miles.)
Canned goods.....	\$1.25	\$0.85	\$0.85
Canned salmon.....	1.10	.70	.70
Potatoes.....	.96	.75	.75
Dried fruit.....	1.54	1.10	1.10
Fresh fruit.....	.96	.835	.90
Sugar.....	1.00	.60	.60
Beans.....	1.15	.75	.85
Rice.....	1.00	.60	.60
Fish, salted or pickled.....	1.25	.85	.85
High explosives.....	1.78	1.34	1.59

San Francisco is 468 miles farther from each of the destination points named in the table than is Los Angeles, but the rates are generally the same as from Los Angeles. It will be observed that the rates to Globe are higher than the rates to El Paso, though the distance to El Paso is 74 miles greater. The rate on canned goods is \$1.25 to Globe and 85 cents to El Paso. On potatoes the rate is 96 cents to Globe and 75 cents to El Paso. The same general relation of rates as between Globe and El Paso runs throughout the list of commodities mentioned in the complaint, and with few exceptions the rate to Bowie is the same as the rate to El Paso.

Phoenix, Ariz., is on another line of the Arizona Eastern, 35 miles north of Maricopa, Ariz., the point of junction with the Southern Pacific. Nogales, Ariz., is on a branch of the Southern Pacific 66 miles south of Tucson, Ariz., where there is a connection with the main line, and 88 miles southeast of Benson, Ariz., where there is another connection with the main line. The same rates apply on most of the commodities in question to these points as to the points of junction with the Southern Pacific, and in view of this situation complainant contends that points on the Globe division should be given the same rates as Bowie.

The conditions at Phoenix are quite different from those at Globe. The distance from the main line is very much less, and the Phoenix division is of easy grade while on the Globe division there are heavy grades and sharp curves. Phoenix is in the heart of the principal agricultural section of Arizona while the Globe division is primarily a mining road. There is a more varied and much larger volume of traffic to and from Phoenix, and competition with the Santa Fe lines is strong, whereas there is no competition at Globe or other points on the Globe division. It was testified that the rates to Nogales are controlled by competition from water and rail lines via Guaymas, Mexico, which compels the maintenance of main-line rates to that point.

Rates to Douglas, Ariz., a point on the El Paso & Southwestern 123 miles southeast of its connection with the Southern Pacific at Tucson, are referred to by way of comparison. To that point rates are considerably lower than to Globe, but the distance is about 115 miles less, or practically the same as the distance to Bowie.

Comparisons are made with rates from Los Angeles and San Francisco to Ogden, Utah, and to certain eastern territories, which are substantially lower for the similar distances to Ogden, and for much greater distances to the eastern territories. These comparisons show that the rates in question are on a relatively higher basis, distances alone considered, but otherwise they are not of particular value.

Rates on sugar from California points to points in Arizona were passed upon by the Commission in the recent case of *Arizona Corporation Commission v. A., T. & S. F. Ry. Co.*, 34 I. C. C., 158. We there held that the sugar rates in effect on and after November 15, 1914, were not shown to be unreasonable, and nothing further need be said here in respect to that commodity.

On fresh fruit the rate from Los Angeles to Globe is 96 cents. To Bowie the rate is 83.5 cents and to El Paso 90 cents. Certain exhibits are devoted to comparisons of rates on various kinds of fruits and vegetables in other parts of the country with rates on the same commodities from Los Angeles to Globe; but in the absence of evidence showing substantially similar transportation conditions, these comparisons throw but little light on the question before us.

Powder and other high explosives are shipped principally from San Francisco at a joint through rate of \$1.94½ to Globe, the same as the rate to Bowie, but to El Paso the rate is \$1.59.

In justification of the rates attacked the defendants showed that the Globe division of the Arizona Eastern was constructed primarily for the purpose of developing and serving mining industries at Globe and Miami and is dependent chiefly upon products of the mines for its revenue. There is some agricultural tonnage, but it is not of

large volume. The revenues of the line are precarious because liable to cease at any time by the mines becoming exhausted or being closed down for other causes.

The Arizona Eastern is owned by the Southern Pacific and is a part of that system, though operated as a separate corporation. It consists of several short lines in the state of Arizona, constructed or acquired since the main line of the Southern Pacific was built. These short lines are generally called branches of the Southern Pacific, and it was said that the policy has been to make such lines pay their own way and not allow them to become a drain upon the parent system.

The Globe division passes in part through the Gila Valley with a down grade from Bowie to San Carlos, a distance of about 90 miles. From San Carlos to Miami the line passes through a mountainous section with steep grades and sharp curves, which make operation difficult and expensive. It was said that the expense of handling traffic over the mountainous section is so heavy as to make the cost of operation for the division a matter of serious consideration. The annual report of the Arizona Eastern for the year ended June 30, 1913, shows that its entire property has a book value of \$14,094,258.16, and that its operating income for that year was \$1,096,578.30, or 7.7 per cent of the book value. After payment of interest and other fixed charges there was a surplus of \$426,170.83. The income from the Globe division separately from the general report is not shown. The evidence is to the effect that the building of the Arizona Eastern was a great benefit to the public, and that the particular division in question opened up one of the most prosperous copper-mining sections of the country. This division depends upon the mines for more than three-fourths of its tonnage, and in view of this fact defendants contend that it is entitled to receive a larger measure of return than trunk lines with diversified and stable traffic.

The defendants have established and now maintain at points on the Globe division joint rates on mining supplies inbound and on the products of the mines outbound. No question is raised as to the reasonableness of these joint rates. They are considerably lower than the combination rates on the commodities in question. This is on the theory that low rates on mining supplies and mining products are necessary to enable the mines at Globe and Miami to compete with other mines. To put it in another way, the carriers contend that low rates on mining supplies and mining products are essential to the life of the mining community, but that such is not the case with respect to rates on the various other commodities included in the complaint.

In the evidence and on brief and argument complainant contended for through routes and joint rates from California to points on the Globe division. But the complaint contains no request for joint rates between the Southern Pacific and Arizona Eastern, and it is not within our authority to establish through routes and joint rates in a proceeding which does not involve the specific question. *American National Live Stock Assn. v. S. P. Co.*, 32 I. C. C., 438-439.

The defendants' evidence shows that the usual basis of making rates on traffic from California to points on connecting or branch lines serving mountainous communities is by combinations on the junction points, and that such basis, where competitive or other conditions are not controlling, applies generally throughout Arizona. They compare the rates complained of with rates on the same or similar commodities from California to branch-line points in the state of Nevada for distances substantially similar to the distance from Los Angeles to Globe. They show that from San Francisco to East Ely, Nev., a distance of 784 miles, via Cobre, Nev., the junction point, the rate on beans is \$1.41, as compared with the rate of \$1.15 from Los Angeles to Globe, a distance of 741 miles. On dried fruits the San Francisco-East Ely rate is \$1.66 and the Los Angeles-Globe rate is \$1.54. On rice the San Francisco-East Ely rate is \$1.27½ and the Los Angeles-Globe rate is \$1.15. In each of these instances the rate from San Francisco to Globe is the same as from Los Angeles, while the distance is 468 miles greater. Other similar instances were stated, but in most cases the comparisons show less differences in the rates. In a few instances the rates are lower from San Francisco to East Ely than from Los Angeles to Globe. On canned goods the Globe rate is \$1.25, whereas the San Francisco-East Ely rate is \$1.15. It was testified of these comparisons that transportation conditions are in most respects similar as between the line from Bowie to Globe and the line from Cobre to East Ely. The comparative tonnage as between the two lines was not shown, and in other respects the evidence is not of special value. Rates from San Francisco and Los Angeles to Goldfield, Nev., are also referred to, but they throw little, if any, additional light on the subject.

We do not understand that the rates from California to Bowie are attacked directly. The complaint is of the combination rates to points on the Globe division, and the evidence deals particularly with the factors which apply from Bowie to such points.

There are no commodity rates applicable to interstate traffic from Bowie to points on the Globe division. Class rates apply universally. These class rates were established by the Arizona Corporation Commission, and compare favorably with class rates for substantially similar distances over other lines in this general territory. In the

table next below are shown the class rates for the distances stated on the Globe division, compared with class rates for similar distances on the Phoenix division, on the Arizona & New Mexico Railway, and on the Southern Pacific main line, all in territory near that involved in this proceeding. The Arizona & New Mexico extends from Hachita, N. Mex., to Clifton, Ariz., crossing and connecting with the Southern Pacific at Lordsburg, N. Mex. The Phoenix division of the Arizona Eastern extends via Phoenix to Christmas, Ariz., a distance of 122 miles. The table is as follows:

From—	Miles.	1	2	3	4	5	A	B	C	D	E
..	124	70	60	49	44	40	40	28	21	18	14
..	122	70	60	49	44	40	40	28	21	18	14
..	109	71	67	62	57	48	51	46	43	39	35
..	110	68	57	49	43	37	37	25	24	23	22
..	124	73	63	55	49	43	43	28	26	24	24
..	125	82	71	63	55	47	47	30	28	26	26
..	40	26	24	23	21	18	19	14	12	10	9
..	39	25	24	23	21	19	19	14	12	10	9
..	41	27	25	23	22	18	19	15	15	15	13
..	40	30	24	21	18	15	15	14	13	11	9

This table shows that on the Globe division the class rates are not only no higher, but are generally lower, than the class rates for hauls of similar length over the other lines mentioned.

Upon the facts of record we do not find that the rates applicable to interstate traffic on the Globe division are excessive or unreasonable. They compare favorably with class rates for substantially similar distances over other lines in the same general territory under transportation conditions which are not more difficult than on the Globe division. Nor do we find that the rates from California to points on the Globe division are unreasonable. There is a deviation from section 4 of the act in the rate on high explosives, but the application for relief under that section was heard with No. 6255, and is disposed of in that connection.

The refrigeration charges on shipments of fruits and vegetables from California to points on the Globe division are also attacked as unreasonable and unjustly discriminatory. There is nothing specific as to the discriminatory feature of the complaint. The refrigeration charges named in the tariffs are \$60 per car on deciduous fruit (except apples), \$43.74 per car on citrus fruit, straight or mixed with vegetables, and \$42.50 per car on apples and vegetables, straight or mixed. These rates are based upon a car minimum weight of 26,000 pounds, with an additional charge per 100 pounds for excess weight. The rates are blanketed to cover large territories of origin and destination. Statements in the form of exhibits were filed of record showing all shipments that moved under refrigeration from September,

1912, to October, 1913. These statements give in detail the average cost of ice consumed, the average length of haul, the rate charged for hauling the ice, and other items of cost such as repairs to bunkers and supervision in transit. The method of computation and the amounts of the charges are based chiefly upon our report in *Arlington Heights Fruit Exchange v. S. P. Co.*, 20 I. C. C., 106. The exhibits show that for the period covered by them the average cost per car to the carriers exceeded the average revenue received. On the facts shown we do not find that these refrigeration charges are unreasonable.

It follows from what has been said that the complaint in No. 6207 must be dismissed. It will be so ordered.

The complaint in No. 6208 alleges that defendants' class and commodity rates from eastern group territories to points on the Globe division of the Arizona Eastern are unreasonable in violation of section 1, and unjustly discriminatory in violation of sections 2, 3, and 4. Because of the alleged violation of section 4, those portions of defendants' Fourth Section Applications Nos. 1120, 1220, 2060, 3732, and 4621 by which authority is sought to continue through rates on classes and commodities from eastern group territories to points on the Arizona Eastern in excess of the combinations of intermediate rates to and from El Paso, Tex., and other intermediate points, were set for hearing in connection with the complaint.

The averment of discrimination under sections 2 and 3 is not more definite than in No. 6207, and our holding on this subject is the same as in that case. The questions properly before us involve only the reasonableness of the rates, and whether they violate the inhibition of section 4 against a greater through charge than the aggregate of intermediate rates.

Rates from the east are published as joint through rates, although they generally include the full local rates beyond Bowie, Ariz., the junction point with the Southern Pacific. The complaint was filed October 8, 1913. At that time the through rates were in many cases higher than combinations of the intermediate rates, and in some instances this situation still exists. The joint through class rates then in effect from representative points in eastern group territories to Globe, Ariz., a point illustrative of the situation on the Globe division of the Arizona Eastern, together with combinations of the intermediate class rates contemporaneously in effect, based on El Paso or Bowie, were as shown in the following table:

40 I. C. C.

From—	Group.	Dis- tance (miles).		1	2	3	4	5	A	B	C	D	E
New York.....	A	2,620	Through.....	413	365	314	259	214	226	181	150	135	122
			Combination....	364	314	275	244	200	206	155	127	110	100
			Difference.	47	51	39	15	14	20	26	23	25	22
Pittsburgh.....	B	2,180	Through.....	383	340	294	246	204	213	171	142	128	115
			Combination....	389	339	291	261	210	214	161	134	117	105
			Difference.	.....	1	3	.....	.....	.....	10	8	11	10
Cincinnati.....	C	1,905	Through.....	357	318	284	240	199	207	166	137	124	112
			Combination....	359	310	268	225	192	196	151	119	107	95
			Difference.	.....	8	16	15	7	11	15	18	17	17
Chicago.....	D	1,787	Through.....	353	318	274	234	194	201	161	133	124	111
			Combination....	345	310	258	219	187	190	146	115	107	94
			Difference.	8	8	16	15	7	11	15	18	17	17
New Orleans...	E	1,514	Through.....	337	302	268	230	190	197	157	130	118	107
			Combination....	329	284	249	215	183	186	139	112	95	84
			Difference.	8	18	19	15	7	11	18	18	23	23
Kansas City....	F	1,260	Through.....	323	289	248	217	180	184	147	122	114	102
			Combination....	339	294	259	238	191	194	145	118	101	90
			Difference.	.....	.....	.....	.....	.....	.....	2	4	13	12
Denver.....	J	1,005	Through.....	288	254	219	192	159	163	130	109	101	91
			Combination....	280	242	203	177	152	152	115	91	84	74
			Difference.	8	12	16	15	7	11	15	18	17	17

It will be observed from the table that, except from Pittsburgh, Cincinnati, and Kansas City, the through rates as to all the classes were higher than combinations of the intermediate rates. As to some of the classes this was likewise true of the three excepted points of origin.

By tariffs effective December 1, 1913, the through class rates from most of the eastern points here involved were materially reduced. The reduced rates from representative points to Globe were as shown in the following table, in which the combination rates are also given wherever still lower than the through rates:

From—	1	2	3	4	5	A	B	C	D	E
New York:										
Through.....	405	353	298	244	207	215	166	132	118	105
Combination.....	364	314	275	244	200	206	155	127	110	100
Difference.....	41	39	23	.....	7	9	11	5	8	5
Pittsburgh: Through.....	375	328	278	231	197	202	156	124	111	98
Cincinnati:										
Through.....	357	310	268	225	192	196	151	119	107	96
Combination.....	359	310	268	225	192	196	151	119	107	95
Difference.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1
Chicago: Through.....	345	310	258	219	187	190	146	115	107	94
New Orleans:										
Through.....	335	294	252	215	183	186	142	112	101	86
Combination.....	329	284	249	215	183	186	139	112	95	84
Difference.....	6	10	3	.....	.....	.....	3	.....	6	2
Kansas City: Through.....	315	277	232	202	173	173	132	104	97	85
Denver: Through.....	280	242	203	177	152	152	115	91	84	74

There are but few commodity rates from eastern group territories to points on the Globe division. These are made in a manner similar to that stated with respect to the class rates; that is, the joint through rates are generally based on combinations which include the local class rates beyond Bowie. Prior to December 1, 1913, these through commodity rates were in many instances higher than the combinations of intermediate rates.

By the tariff of December 1, 1913, and by a later tariff effective November 15, 1914, the defendants made many changes in the commodity rates from the east to points in the west, including points in Arizona. These changes had the effect in most instances of reducing the commodity rates to Bowie. The filing of the later tariff was an effort by defendants to comply with orders of this Commission in cases involving rates from the east to points intermediate to Pacific coast terminals, with special reference to violations of the long-and-short-haul clause of the fourth section, which orders were sustained by the Supreme Court in *Intermountain Rate Cases*, 234 U. S., 476.

The following table shows both the through and combination commodity rates on the commodities named, from representative eastern points to Globe, in effect October 8, 1913, when this complaint was filed, and the changes made by the tariffs of December 1, 1913, and November 15, 1914:

Commodity.	From—	On Oct. 8, 1913.		On Dec. 1, 1913.		On Nov. 15, 1914.	
		Through.	Combination.	Through.	Combination.	Through.	Combination.
Canned goods.....	Chicago, Ill. (D)....	\$1.66	\$1.59	\$1.59	\$1.59	\$1.58	\$1.58
Furniture.....	Chicago (D).....	1.94	1.96	1.87	1.96	1.87	1.96
Agricultural implements.	St. Louis, Mo. (E)...	1.97	1.86	1.86	1.86	1.86	1.74
Bar iron and steel..	Pittsburgh, Pa. (B)..	1.31	1.52	1.31	1.52	1.31	1.52
Packing-house products.	Chicago (D).....	1.90	1.83	1.83	1.83	1.83	1.83
Rice.....	Beaumont, Tex. (F)	1.18	1.11	1.11	1.11	1.73	1.11
Salt.....	Hutchinson, Kans. (G).	.88	.775	.775	.775	.97	.68
Farm wagons.....	Kenosha, Wis. (D)...	2.01	1.90	1.90	1.90	1.90	1.74
Potatoes.....	Cambridge, Minn. (D).	1.33	.96	1.15	.96	1.15	.96
Soap.....	Kansas City, Kans. (F).	1.39	1.32	1.32	1.32	1.32	1.32
Crackers.....	Kansas City (F).....	2.09	1.94	1.94	1.94	1.77	1.77

It will be observed from the table that at the time the complaint was filed the through rates were in nearly every instance higher than combinations of the intermediate rates. With one exception, namely, as to potatoes from Cambridge, Minn., this condition was remedied by the tariff of December 1, 1913. This was done by reducing the higher through rates to the same or a lower level than combinations of the intermediate rates. Under the tariff of November 15, 1914, which is still in effect, the same exception remains and there are four additional exceptions, namely, rice from Beaumont,

Tex., salt from Hutchinson, Kans., agricultural implements from St. Louis, and farm wagons from Kenosha, Wis., as to which the through rates are higher than the combinations. This was brought about by the cancellation of the joint through commodity rates on the articles named, which left the class rates in effect.

For a number of years prior to this proceeding, the transcontinental carriers published a rule to the effect that where the aggregate of the intermediate rates made less than the joint through rate the former should be applied as the lawful rate. This rule is still embodied in the tariff. The class rates remain numerically the same as on December 1, 1913. The effect of the rule was and is to relieve the tariff from objection on account of the provision of the fourth section which declares that any through charge greater than the aggregate of the intermediate rates subject to the act shall be unlawful. The issue sought to be raised by the complaint as to the fourth section is therefore without substantial basis. No evidence was offered on the subject because under the tariff rule the alleged violations could not occur. Nothing further need be said on this phase of the case.

From the east as well as from the west the rates to branch-line points are in some instances the same as the rates to the points of junction with the main line of the Southern Pacific. This is true of Phoenix, 35 miles from Maricopa, and Nogales, 88 miles from Benson, both of which are referred to in connection with No. 6207. The complainant contends that rates from the east should be blanketed to all branch-line points in Arizona, the effect of which would be to give to points on the Globe division the same rates as to Bowie. The through class rates from Chicago to Bowie and to Globe, and to main-line and branch-line points in Arizona to which the rates are the same, are shown in the following table:

To—	Miles.	1	2	3	4	5	A	B	C	D	E
Bowie (main line).....	1,663	275	250	209	175	147	150	118	94	80	80
Globe.....	1,787	345	310	258	219	187	190	146	115	107	94
Maricopa (main line).....	1,864	} 290	251	209	175	147	150	118	94	80	80
Phoenix.....	1,899										
Benson (main line).....	1,729										
Nogales.....	1,817										

Representative commodity rates based on the same principle are shown in the following table:

Commodity.	From—	To Bowie.	To Globe.	To Maricopa, Phoenix.	To Benson, Nogales.
Packing-house products.....	Chicago.....	\$1.43	\$1.83	\$1.47	\$1.47
Canned goods.....	do.....	1.18	1.58	1.18	1.18
Farm wagons.....	Kenosha.....	1.34	1.74	1.34	1.34
Crackers.....	Kansas City.....	1.33	1.77	1.33	1.33
Soap.....	do.....	.92	1.32	.92	.92
Furniture.....	Chicago.....	1.47	1.87	1.47	1.47

On packing-house products and furniture the commodity rates to Florence, Ariz., 71 miles from Maricopa, are the same as to Maricopa, but on other commodities the rates to Florence are higher than to Maricopa.

The contention of the carriers rests upon substantially the same grounds as stated in No. 6207 with respect to commodity rates from the west. Transportation, commercial, competitive, and other conditions at the points to which main-line rates are extended are materially different from those existing on the Globe division, and a comparison of the rates is of but little value. What has been said on this subject in No. 6207 is equally applicable here.

The rates to Florence are somewhat lower than to Globe, although the distance to the latter point is considerably less. This is explained in part by the fact that for a number of years the line extending from Phoenix to and beyond Florence was controlled by the Santa Fe system, and by the fact that the Santa Fe because of cross-country competition with points on the Southern Pacific east of Maricopa established the Maricopa rates to Florence. Subsequently, when the Southern Pacific secured control of the line and leased it to the Arizona Eastern, the basis of rates established by the Santa Fe was continued; but by the tariff of November 15, 1914, commodity rates on many articles were made higher to Florence than to Maricopa or Phoenix.

With respect to Nogales it was shown that for a number of years the same transcontinental rates were applied to Guaymas, Mexico, as to California terminals because of water competition with the Atlantic seaboard. The combinations on Guaymas were less than the through rates on many commodities and on some of the classes. Owing to the unsettled conditions in Mexico, the Southern Pacific line from Guaymas to Nogales has been closed, but as soon as conditions become normal again it is the purpose to reopen the line.

Certain branch-line points in California are referred to by complainant as taking the same rates as apply to the main-line junctions. The defendants refer to instances in Nevada and New Mexico where the through rates to branch-line points are made by combinations on the junction points, the same as the rates here in question.

Complainant also contends that the rates to Globe should be less or in any event no higher, than the rates to Phoenix, a more distant point. Reference is made to *Railroad Commission of Nevada v. S. P. Co.*, 19 I. C. C., 238, where this Commission prescribed class rates from eastern points to Winnemucca, Nev., which are lower than rates to Reno, Nev. The distance to Winnemucca is 174 miles less than to Reno, while the distance to Globe is 112 miles less than to Phoenix. Winnemucca is an intermediate main-line point, whereas

Globe is not intermediate to Phoenix and is not on the main line. The conditions are not at all similar.

As already stated, the through class rates to points on the Globe division are generally made up of rates to and from Bowie. The rates beyond Bowie were established by the Arizona Corporation Commission and are used by defendants as the basis in part for rates applicable to interstate traffic.

In *Maricopa County Commercial Club v. S. F., P. & P. Ry. Co.*, 19 I. C. C., 257, class rates were prescribed by this Commission, the same as now in effect, from Pittsburgh, Cincinnati, Chicago, St. Louis, and Kansas City to Phoenix. In that case we expressed the view that the carriers should extend to Phoenix and to other points in Arizona a reasonable list of commodity rates adapted to the needs of that territory and in substantial conformity with rates on the same commodities to other intermountain points on lines to the north. By tariffs filed in response to that suggestion the carriers established commodity rates to Phoenix which were applied as maxima to intermediate main-line points, except where combinations on El Paso made lower. The Phoenix rates are generally applied to Bowie.

The class rates from El Paso to Phoenix were prescribed by this Commission in *Maricopa County Commercial Club v. M. & P. R. R. Co.*, 22 I. C. C., 279. The distances and the class rates from El Paso to Bowie and to Phoenix are as follows:

To—	Miles.	1	2	3	4	5	A	B	C	D	E
Bowie.....	198	110	96	88	78	65	65	36	34	32	22
Phoenix.....	433	165	137	122	99	83	83	60	55	50	42

Class rates from the east to El Paso are based on the rates prescribed by the Commission from St. Louis to Texas common points. *Railroad Commission of Texas v. A., T. & S. F. Ry. Co.*, 20 I. C. C., 463. The record shows that rates from the Atlantic seaboard to El Paso are affected by water competition to Galveston, Tex., and by the low intrastate rates thence to El Paso.

By the tariff of November 15, 1914, considerable reductions were made in the rates to Phoenix, Maricopa, and Bowie, and the reductions to Bowie resulted in similar reductions in the through rates to Globe.

The evidence as to the kinds of traffic handled on the Globe division, and as to transportation and other conditions involved, is the same as in No. 6207. It appears that for the year ended June 30, 1914, nearly 90 per cent of the traffic that moved over the Arizona Eastern consisted of mining supplies inbound and mining products outbound, the rates on which are not involved in these proceedings. The rates on mining supplies from the east are generally the same to Globe as
40 I. C. C.

to Bowie. This situation is explained as due to the same conditions mentioned above in No. 6207. In a few instances the rates are higher to Globe, but less than the combinations on Bowie.

The defendants justify the method of making rates from the east to points on the Globe division on the same grounds urged by them in No. 6207 with respect to rates from the west, and they contend that complainant's evidence does not show that the rates even as they existed when the complaint was filed were unreasonable.

Numerous exhibits submitted by the complainant compare the rates to the Globe division with rates contemporaneously in effect on similar commodities for other movements in different parts of the country. Manifestly these comparisons are of less value, in view of the recent changes in the rates, than otherwise they might have been. But aside from this, the comparisons are not supported by evidence showing such similarity of transportation and other conditions as to render them of special value in determining the reasonableness of the rates in question. There are no competitive or other conditions that control or seriously affect rates to points on the Globe division. In this and in other respects the conditions are materially different from those obtaining in the other sections of the country referred to.

From Kansas City, Mo., the distance to Globe is 1,208 miles. To Los Angeles the distance is 1,699 miles, and to San Francisco via Los Angeles 2,183 miles. The rates to Globe are higher than to the more distant California points. On the principle that the length of haul and the resulting transportation cost should control in such cases, complainant contends that the Globe rates should be less instead of greater than the rates to the Pacific coast. But Globe is not an intermediate point, and is, therefore, not in the same situation as Bowie or other points on the main line of the Southern Pacific, as to which the fourth section of the act requires that rates shall be no higher than to the more distant points. Rates to Bowie appear to have been established by the carriers under the tariff of November 15, 1914, in accordance with the order of the Commission in the *Intermountain Rate Cases, supra*.

There are numerous contentions by counsel for complainant, both in his brief and on oral argument, some of which have not been specifically discussed in this report, but they have all been considered, as have also all the facts shown of record whether herein mentioned or not.

Upon the facts of record we are of opinion and find that the through class and commodity rates from the eastern group territories involved to points on the Globe division, in effect at the time the complaint in this proceeding was filed, as applied under the tariff rule making the combination rate applicable whenever lower than the through rate,

have not been shown to be unreasonable to a greater extent than the reductions since made in such through rates.

It follows from what has been said that the complaint in this case must be dismissed, and it will be so ordered.

The complaints in No. 6255 and Sub-Nos. 1 to 7, inclusive, are based, primarily, upon demands by members of the Graham & Gila County Traffic Association for reparation on account of shipments involved in Nos. 6207 and 6208. Violations of the long-and-short-haul clause of the fourth section are alleged with respect to rates from California points, and in view thereof that portion of the Southern Pacific Company's application No. 1161 by which authority is sought to continue rates on classes and commodities from points in California to El Paso, Tex., which are lower than rates contemporaneously in effect on the same classes and commodities to Bowie, Ariz., and other intermediate points, was heard in connection with these complaints.

Rates on some commodities not mentioned in No. 6207 or No. 6208, and on coal in carloads from Gallup and San Antonio, N. Mex., and Ravenswood, Colo., to points on the Globe division are attacked, but no evidence was submitted at the hearing as to such additional commodities.

It is our understanding that deviations from the long-and-short-haul clause of the fourth section in rates from California to El Paso, Tex., and intermediate points have been adjusted or are in process of adjustment in other cases already decided or now pending before the Commission, except as to rates on high explosives. With respect to this commodity, evidence was submitted at the hearing of these complaints.

The defendants justify the maintenance of rates on high explosives from California to El Paso, which are lower than rates on the same commodity to intermediate points, on the ground of competition at El Paso with high explosives from Louviers, Colo., Pittsburg, Kans., and Joplin, Mo.

In the following table the rates and distances from all the producing points named to the intermediate points and to El Paso are shown:

To—	From San Francisco.		From Louviers.		From Pittsburg.		From Joplin.	
	Miles.	Rate.	Miles.	Rate.	Miles.	Rate.	Miles.	Rate.
Yuma, Ariz.....	720	\$1. 70	1, 272	\$2. 58	1, 616	\$2. 08	1, 636	\$2. 98
Tucson, Ariz.....	970	1. 70	1, 021	2. 10	1, 365	2. 50	1, 385	2. 50
Benson, Ariz.....	1, 019	1. 86	972	2. 10	1, 316	2. 50	1, 336	2. 50
Bowie, Ariz.....	1, 087	1. 94	905	2. 10	1, 249	2. 45	1, 269	2. 45
Lordsburg, N. Mex.....	1, 135	1. 94	857	2. 10	1, 201	2. 34	1, 221	2. 34
Doming, N. Mex.....	1, 194	2. 00	797	1. 85	1, 141	2. 00	1, 161	2. 00
Rio Grande, N. Mex.....	1, 279	1. 64	712	1. 52	1, 053	1. 54	1, 178	1. 54
El Paso, Tex.....	1, 282	1. 59	709	1. 47	1, 053	1. 49	1, 073	1. 49

As was said in No. 6207, the rate on high explosives from San Francisco is the same to Globe as to Bowie.

On the facts brought out at the hearing we are of opinion and find that the Southern Pacific Company has justified the maintenance of rates on high explosives in carloads from San Francisco and other points in California to El Paso which are lower than rates now in effect to intermediate points, and the fourth section application as to this commodity will therefore be granted. An order to this effect will be entered.

The question of reparation on account of the higher freight rates charged to intermediate points than to the more distant points prior to the tariffs which became effective November 15, 1914, is concluded by our decision in *Inland Seed Co. v. O.-W. R. R. & N. Co.*, 40 I. C. C., 517, wherein we denied reparation on shipments which moved to the intermountain territory previous to an adjustment of the rates under our decision in the *Intermountain Rate Cases; Railroad Commission of Nevada v. S. P. Co.*, 21 I. C. C., 329; and *City of Spokane v. N. P. Ry. Co.*, 21 I. C. C., 400; affirmed in *Intermountain Rate Cases*, 234 U.S., 476. Following the decision in that case reparation is denied.

W I. C. C.

No. 6645.
CENTRAL VERMONT BOAT LINES.

Submitted June 3, 1916. Decided July 5, 1916.

Upon application of the Central Vermont Railway Company, under section 5 of the act to regulate commerce, as amended by section 11 of the Panama Canal act, for permission to continue existing service by vessels between New York, N. Y., and New London, Conn., and to install a similar service between New York and Providence, R. I., *Held:*

1. That the petitioner may compete with the existing and the proposed water lines.
2. That the existing service between New York and New London is being operated in the interest of the public; that it is, and the proposed service between New York and Providence will be, of advantage to the convenience and commerce of the people; and that an extension of the former and the installation of the latter will neither exclude, prevent, nor reduce competition on the routes by water under consideration.

J. W. Redmond, Charles F. Black, and J. S. Murdock for petitioner.

Lewis A. Waterman for Providence Chamber of Commerce and various shippers.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

This proceeding is upon application of the Central Vermont Railway Company, filed February 25, 1914, under section 5 of the act to regulate commerce, as amended by section 11 of the Panama Canal act, for an order permitting the continuance of operation of vessels between New York, N. Y., and New London, Conn., and the installation of a service by vessels between New York and Providence, R. I. The interest of the petitioner in the existing and the proposed service is through ownership of the entire stock issue of the Central Vermont Transportation Company, in which the legal title to the boats is vested. More than 70 per cent of the stock of the petitioner, in turn, is owned by the Grand Trunk Railway Company of Canada.

The petitioner operates a rail line, through ownership, leases, and trackage rights, from St. Johns, Quebec, and Rouses Point, N. Y., through Vermont, Massachusetts, and Connecticut to New London, between which point and pier 29, East River, New York City, traffic is handled by boats of the Central Vermont Transportation Company, hereinafter referred to as the transportation company. Some years ago petitioner, desiring to construct a line from Palmer,

Mass., a point on its line a few miles north of the Massachusetts-Connecticut state line, to Providence, caused to be organized for the construction of the portions of the proposed line in Massachusetts and Rhode Island, respectively, the Southern New England Railroad Corporation and the Southern New England Railway Company, and holds the entire stock issue of these two corporations. It also caused the transportation company to increase its capital stock from \$200,000 to \$1,000,000, and to have constructed two combination passenger and freight steamers for operation between New York and Providence. The petitioner further guaranteed the principal and interest of \$1,000,000 5 per cent gold bonds issued by the transportation company, of which it has already paid \$350,000.

The transportation company now operates between New York and New London two freight steamers, and has docked at New London, awaiting the completion of the Palmer-Providence line, the two new steamers referred to. For the purposes of this investigation the existing and the proposed boat services may be considered as though operated or proposed to be operated directly by the petitioner, for while the transportation company is a distinct legal entity and has an organization, it has several officers in common with the petitioner; does no transportation business in its own name; files no tariffs; issues no bills of lading; solicits no traffic, and receives none except such as is delivered to it by the petitioner; and handles no funds, its accounts being kept and expenses paid by the petitioner. It is apparently allowed only sufficient divisions to cover expenses. No dividends have been declared on its stock. The petitioner leases pier 29, East River, and pays all of the expenses in connection therewith and also of solicitation.

Following is a statement of the traffic, in net tons, handled by the transportation company during the period from June 28, 1909, to February 28, 1916:

	From New York.	To New York.
June 28, 1909, to June 30, 1910.....	273, 228	85, 196
Year ending June 30—		
1911.....	244, 582	88, 006
1912.....	260, 600	69, 065
1913.....	288, 214	57, 375
1914.....	331, 590	58, 706
1915.....	332, 623	47, 491
July 1, 1915, to Feb. 7, 1916.....	165, 673	37, 800
Total.....	1, 896, 570	444, 447

The proportion of this traffic which originated at or was destined to points on the line of the petitioner is not shown, but a large portion of it was interchanged with the Grand Trunk. The decrease in the

tonnage to New York is explained by petitioner to be the result of the cancellation in September, 1911, of joint rates, which have been republished since the hearing, between New York and points on the Boston & Maine. This cancellation, it was testified, caused a loss in revenue to the petitioner of over \$100,000 annually, due to the diversion of traffic to other routes. The rates of the water-and-rail route of the petitioner and the Grand Trunk from New York to Chicago, Ill., and other central freight association points were, prior to the recent general increase, lower than the all-rail rates by the following differentials:

Class -----	1	2	3	4	5	6
Differential -----	10	8	6	4	4	3

Between Central Vermont stations and New York there are no differentials in favor of the rail-and-water routes. The petitioner participates in through routes and joint rates between New York and points on its line in connection with the Boston & Maine Railroad from South Vernon, Vt., to Springfield, Mass., and the New York, New Haven & Hartford Railroad, hereinafter referred to as the New Haven, between the latter point and New York, and to a limited extent in connection with the New Haven to and from New London. From points south of Brattleboro, Vt., there are no joint rates to or from New York in connection with the New Haven except on such traffic as can not, because of its nature, move by boat. On forest products and other heavy low-grade traffic the petitioner also participates in through routes and joint rates from points on its line to New York in connection with the New York Central & Hudson River and West Shore railroads and intermediate carriers. The testimony is that all traffic which can be economically and satisfactorily handled by a rail-and-water route is routed in connection with the boats of the transportation company unless specifically directed to the contrary by shippers. At four points on its line the petitioner meets competition from the New Haven, which has both all-rail and rail-and-water routes to New York, and at one of said points, Norwich, Conn., from the Norwich & New York Propeller Company, an independent line operating a triweekly service in each direction between New York and Norwich and New London.

A number of shippers from points on the line of the petitioner testified as to the reliability and generally quick and satisfactory character of the service furnished by the petitioner in connection with the boats of the transportation company. There was no testimony by shippers or others in opposition to the application.

There are now two boat lines between New York and New London in addition to the one under consideration. One, operated by the New England Steamship Company, a subsidiary of the New Haven,

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furnishes a daily service, and, with the other water lines operated by that company and also by the Hartford & New York Transportation Company, another subsidiary of the New Haven, is now the subject of an investigation upon an application under the Panama Canal act, Docket No. 6469. The other, known as the Chelsea line, is the one above referred to, operated by the Norwich & New York Propeller Company. The wharves of these two lines are near the business district of New London, whereas the boats of the transportation company land at East New London, on a neck of land across a small bay, and, as it is not practicable to approach its docks by team, traffic carried by it between New York and New London has to be ferried. The testimony indicates that the competition between the three lines for port to port traffic is keen, but apparently the transportation company does not secure a large portion of it. The port to port rates of the New England Steamship Company are the same as those of the transportation company; those of the Chelsea line are lower.

The president of the petitioner testified that it was its purpose to complete as soon as practicable the line from Palmer to Providence, on which more than \$6,000,000 has been expended. Since August, 1913, when work was resumed after an interruption, due, it is claimed, to financial difficulties, the expenditures on the portions in Massachusetts and Rhode Island have amounted to \$2,612,870.89 and \$1,206,642.14, respectively.

Providence is now served by three steamer lines to New York, namely, the New England Steamship Company, the Hartford & New York Transportation Company, and a line independent of railroad control, the Colonial Navigation Company. The wharves of these three lines are on the east side of the harbor, and the boats of the transportation company will land on the west side.

While ordinarily there might be some question as to the wisdom of passing upon an application for permission to install a water service in a case where the date of its inauguration is so uncertain, we think that the circumstances and conditions here appearing justify action at this time on that portion of petitioner's application.

Upon the inauguration of the New York-Providence service there would seem to be no question but that the petitioner might, in connection with either of its steamer lines, compete with the other, for it would have two rail-and-water routes between New York and points on its own line and on the lines of the Grand Trunk and its connections. We therefore deem it unnecessary to enter into a discussion as to whether or not petitioner does or may compete with the transportation company under present conditions. However, in order to maintain a satisfactory route from New York to the west

at rates substantially lower than those applicable via the all-rail routes, it would seem to be necessary for the petitioner, which serves no large city with its own rails, to operate, or control the operation of, boats between New York and New London; and, if the extension of the rail line to Providence is to have the effect of increasing the value of the route of the petitioner and the Grand Trunk between New York and the west as a competitive force, it would likewise seem necessary for the petitioner to operate, or control the operation of, boats between New York and Providence.

Upon consideration of all of the facts of record, we are of opinion, and find, that the petitioner may compete with its present and proposed steamer lines, but that the existing service between New York and New London is being operated in the interest of the public; that this service is, and the proposed service between New York and Providence will be, of advantage to the convenience and commerce of the people; and that an extension of the former and the installation of the latter will neither exclude, prevent, nor reduce competition on the routes by water under consideration. The application will therefore be granted.

As hereinbefore stated, the line between New York and New London operated by the New England Steamship Company is now the subject of investigation, and we shall not require the petitioner to file its rates between those points prior to the issuance of an order in Docket No. 6469. Upon the issuance of an order in that investigation an order will be entered herein requiring the petitioner to publish and file said port to port rates.

40 I. C. C.

No. 7912.
TEX-O-CIDE CHEMICAL COMPANY
v.
TEXAS & PACIFIC RAILWAY COMPANY ET AL.

Submitted January 27, 1916. Decided June 28, 1916.

Rates charged by defendants for the transportation of secondhand iron and steel drums from Chicago, Ill., Atlanta, Ga., and Kansas City, Mo., to Dallas, Tex., not shown to have been unreasonable. Complaint dismissed.

C. W. Harris and *B. W. Bridges* for complainant.

R. C. Fyfe for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainant, C. B. Burton, formerly was engaged in the manufacture of floor-sweeping compound at Dallas, Tex., under the trade name of the Tex-O-Cide Chemical Company. By complaint, filed April 12, 1915, he alleges that the rates charged by defendants for the transportation of eight carloads of old secondhand carbide cans during the period from December, 1912, to May, 1914, from Chicago, Ill., Atlanta, Ga., and Kansas City, Mo., to Dallas were unjust and unreasonable to the extent that they exceeded one-half the fourth-class rates. Reparation is asked and the establishment of reasonable rates for the future. The claim was presented to the Commission informally June 8, 1914.

The shipments consisted of secondhand iron or steel carbide drums less than 3 feet in length, of different capacities, U. S. standard gauge No. 20 or thinner. The shipments were billed as empty cans or empty carbide cans. Charges were collected for four shipments from Chicago in the sum of \$385.70 on an aggregate weight of 39,000 pounds at a rate of 98 cents per 100 pounds; for three shipments from Atlanta in the sum of \$313.95 on an aggregate weight of 34,500 pounds at a rate of 91 cents per 100 pounds; for one shipment from Kansas City in the sum of \$72.90 on 9,000 pounds at a rate of 81 cents per 100 pounds. The rates charged were commodity rates applicable to new or secondhand tin cans, in carloads, and were based on a minimum of 9,000 pounds. The minimum applicable to new or secondhand tin cans was 12,000 pounds per 36-foot car. Drums of the kind shipped are said to be worth about 40 cents

new and about 10 cents second hand, and to load on an average of not over 10,000 pounds per car.

Prior to February 14, 1913, no specific rating or rates were applicable, apparently, to shipments of secondhand drums, other than returned shipments, from and to the points in question. But, effective February 14, 1913, the western classification, which governed and still governs the traffic, rated "drums, iron or steel, under 10 feet in length" in less than carloads, third class; in carloads, class A, minimum 24,000 pounds. These ratings and rates had been applicable to new drums and were merely extended to cover second-hand drums also. The third-class rates and class A rates from the points of origin to Dallas were and are as follows, rates stated in cents per 100 pounds:

To Dallas, from—	Third class.	Class A.
Chicago.....	116	88
Atlanta.....	108	82
Kansas City.....	96	72

All of the shipments moved subsequently to February 14, 1913, with the exception of one weighing 9,300 pounds that moved from Atlanta in December, 1912, on which charges were collected in the sum of \$84.63.

Charges would have accrued on the shipments that moved subsequently to February 14, 1913, at the class A rates and minimum of 24,000 pounds in the sum of \$1,411.20. On the basis of the billed weights of these shipments and the third-class rates the charges would have been \$810.96. Apparently there is an outstanding undercharge on these shipments of \$123.04.

Effective March 22, 1915, after the shipments had moved, the western classification rated iron and steel drums U. S. standard gauge No. 20 or thinner, in carloads, as follows: S. u., loose, or in packages, straight or mixed carloads, minimum weight 10,000 pounds, subject to rule 6 (b), second class.

The second-class rates to Dallas were and are: \$1.41 from Chicago, \$1.30 from Atlanta, \$1.11 from Kansas City.

Complainant does not contend that the old or new rating or rates applicable to new carbide drums were or are unreasonable, but insists that reasonable rates on old secondhand carbide drums should not have exceeded one-half of the fourth-class rates and that for the future secondhand carbide drums for delivery, filled, to the carrier that brings in the empties, should be accorded one-half of the fourth-class rates, any quantity, which are the rates applicable to shipments of various secondhand containers, including iron drums returned to original shippers.

The fourth-class rates to Dallas were and are: \$1.06 from Chicago, 99 cents from Atlanta, and 89 cents from Kansas City. The shipments received by complainant are not returned shipments. Emphasis is laid on the fact that the secondhand containers in question are stated to be of less value than new containers of the same kind, and it is pointed out that the carriers have already received a revenue on the containers when they are shipped out filled with carbide, and again receive something on the empties returned to the carbide manufacturers.

The contention that secondhand articles should be rated lower than the same articles when new was considered in *Minneapolis Traffic Asso. v. C. & N. W. Ry. Co.*, 23 I. C. C., 432, where we said:

We are not prepared to lay down the principle that old or secondhand articles must be treated differently from new or that value is the controlling element in making rates.

We find that the rate charged on the shipment from Atlanta, in December, 1912, and the rates applicable to the remaining shipments involved are not shown to have been unreasonable, and an order dismissing the complaint will be entered.

40 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 11.
MILLING LOGS IN TRANSIT ON TAP LINES.

Submitted March 27, 1915. Decided July 3, 1916.

1. Request that trunk line carriers generally be required to establish milling-in-transit arrangements on logs in connection with tap lines in the lumber blanket rate territory in the southwest denied.
- 2 The establishment by a trunk line of transit arrangements on logs hauled by it to mills located upon its own lines in the blanket territory would subject to undue prejudice and disadvantage the mills on the tap lines with which it connects and has joint rates, unless the trunk line offered them a similar and equal arrangement; the undue prejudice and disadvantage under such circumstances to mills in the same territory that get their logs in over unincorporated logging roads or by teams over tram roads, or by similar means, also pointed out.

L. M. Walter for various tap lines and lumber companies.

W. A. Glasgow, jr., for Butler County Railroad Company.

W. E. Lamb for Kentwood & Eastern Railway Company.

E. E. Eversull for Zwolle & Eastern Railway Company.

T. C. McRae and *W. V. Tompkins* for Prescott & Northwestern Railroad Company.

T. Brady, jr., for Kentwood, Greensburg & Southwestern Railroad Company; New Orleans, Natalbany & Natchez Railroad; Amos Kent Lumber & Brick Company; Kentwood & Natalbany Lumber Company, Limited; Natchez, Columbia & Mobile Railroad Company; and Butterfield Lumber Company.

G. B. Webster and *V. W. Krafft* for Cairo, Truman & Southern Railroad.

G. F. Thomas for North Louisiana & Gulf Railroad Company.

Frank Andrews for Kirby Lumber Company, Lutcher-Moore Lumber Company, and Miller-Link Lumber Company.

S. D. Snow for Wisconsin Lumber Company.

S. H. West for St. Louis Southwestern Railway Lines.

F. H. Wood for Morgan's Louisiana & Texas Railroad & Steamship Company, Louisiana Western Railroad Company, and Texas & New Orleans Railroad Company.

W. T. Hughes for Chicago, Rock Island & Pacific Railway Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

In our original report in *The Tap Line Case*, 23 I. C. C., 277, 297, we commented adversely upon the milling in transit of logs as then practiced on the tap lines in the southwest throughout an extensive district from which group rates applied on lumber to the general markets of consumption. Later, and after the trunk lines in that territory had withdrawn from all such arrangements, the question was further considered at the instance of some of the lumber companies whose interests had been affected, and in our second supplemental report in that proceeding, 31 I. C. C., 490, 493, we said:

With respect to the milling-in-transit rate on logs as formerly practiced on the tap lines, we adhere to our original conclusion, that the rate on lumber at the junction or mill point may not lawfully be extended back to the point on the tap line where the logs originate, and that any division out of the through lumber rate on account of the log haul can not be sanctioned.

Certain lumber companies operating mills on tap lines in the states of Arkansas, Louisiana, and Texas have now asked for the restoration of milling in transit on their lines in that territory of lumber production, and upon their petition this proceeding was reopened for further argument touching the propriety of that course. In substance the petitioners ask that the blanket rates on lumber, now applying from the lumber mills in the territory in question, shall be made applicable as well from the points where the logs reach the rails of the common-carrier tap lines.

The petitioners suggest a plan for carrying into effect their proposals but say that the particular plan adopted is not important so long as the result is in accord with their desires. What they wish is to have the blanket rate on lumber apply on the weight of the lumber from the point at which the common-carrier tap line takes up the logs. The result of this would be that the haul of one-third of the logs would be included in the rate on the lumber and the tap line would get a division of the lumber rate as from the point at which it received the logs.

In our second supplemental report, *supra*, following the decision of the Supreme Court of the United States in *The Tap Line Cases*, 234 U. S., 1, we required the junction point rate to be made applicable from the mills on the tap lines, and we fixed the maximum divisions that the trunk lines may lawfully pay to the tap lines for hauling the lumber from the mill to the trunk line junction. These divisions are governed by the distance from the mill to the junction, and in many cases amount only to a switching allowance. Under the milling-in-transit plan now proposed the lumber is to be treated as lumber before it is manufactured, and instead of being shipped from

the mill where it actually originates it is to be regarded as having been shipped from the point where the tap line receives the logs. The haul of the lumber being thus extended in a purely fictitious sense back to the point where the tap line receives the logs, the tap line's division out of the trunk line rate on lumber, being governed by the length of the lumber haul, will be largely increased and to that extent the revenues of the trunk line will be depleted. The record shows that with relatively few exceptions the entire log traffic of the tap lines is contributed by the proprietary lumber companies, and therefore the proprietary companies will receive substantially all the benefit derived from the proposed contribution by the trunk lines to the logging expense of the lumber companies served by the tap lines.

In justification of the proposed plan it is claimed: (a) that throughout the territory involved the trunk lines offer similar transit arrangements to lumber manufacturers who operate mills on the trunk lines and draw their logs from forests reached by these lines; (b) that unless similar treatment is accorded to the shippers who operate mills on the tap lines they will be under the disadvantage of having to pay the full log rate into the mills in addition to the lumber rate outbound; (c) that a manufacturer operating a mill at the junction of a trunk line with a lateral tap line will be under the further disadvantage of paying in the aggregate a greater through transportation charge than the manufacturer who operates a mill on the same lateral tap line, but at a point more distant from the trunk line junction, because, say the petitioners, he is relieved in a large measure, if not altogether, of the log-haul expense.

The petitioners referred to many tariffs on file with the Commission as evidence of the transit arrangements authorized by the trunk lines, and urged that these arrangements were not different in substance and effect from the milling-in-transit arrangement suggested by them in this proceeding.

The respondent trunk lines vigorously opposed the suggested plan and challenged the assertion of the petitioners that transit arrangements of the kind and to the extent here sought were authorized in the tariffs referred to, or that such results were reached in any other form. In support of this contention it was explained: (a) that the transportation of logs and the transportation of lumber are conducted by the trunk lines as distinct transactions, separate rates being charged for each service; (b) that no part of its lumber rate is paid by one carrier to compensate another carrier for the log haul; and (c) that in all cases a separate and substantial charge, in addition to the lumber rate, is made for transporting the full weight of the logs.

From an examination and analysis of the tariffs referred to in argument by the petitioners, we are convinced that the explanation by the respondent trunk lines of their practices in the transportation of logs and lumber is quite generally representative. A few exceptions to the general practice were noted, but these can not be regarded as having a controlling effect upon the general question here involved. In the final adjustment with shippers the charges imposed by the trunk lines for transporting logs are independent of and in addition to their charge for transporting the lumber from the mill to the market, and no part of the charge of one carrier for transporting the lumber is used to compensate another carrier for transporting the logs. It is of interest to observe, however, that the majority of the more important trunk lines in the territory here involved maintain net rates of 2 cents and 2½ cents per 100 pounds for transporting logs for distances of 50 miles and under; whereas the gross rates for this same service vary from 3 cents to 12 cents. The net rates appear to be in general harmony with rates considered by this Commission and state commissions for the independent transportation of logs. Penalty rates are condemned in *Red River Oil Co. v. T. & P. Ry. Co.*, 23 I. C. C., 438.

A great many lumbermen haul their logs to the mills by teams, while a still greater number use unincorporated tramroads for this purpose. These facilities are usually owned by the lumber companies, and the expense incurred in hauling the logs to the mill is considered a part of the cost of manufacturing the lumber. Other lumbermen employ a tap line or a trunk line to haul their logs to the mill, and in these cases the charge paid for the service is a part of the cost of manufacturing the lumber. It is therefore quite clear that if a trunk line, under the plan here proposed, pays out of the lumber rate a part of the tap-line charges for transporting the logs, a shipper using the tap line will be relieved of a part of his manufacturing cost at the expense of the trunk line revenues; and this likewise would be true in instances where a shipper used a trunk line for transporting both logs and lumber if the trunk line compensated itself in part out of the lumber rate for the log transportation. The disadvantages of which the petitioners here complain, and which they seek to overcome through the operation of the proposed transit arrangement, seem not to spring either from unreasonable transportation rates or from unjust discrimination, but appear to arise from a difference in their manufacturing costs, which the petitioners seek to equalize at the expense of the trunk lines. On this point the Commission has said in other cases that it can not sanction a rate adjustment the sole purpose of which is to equalize disadvantages of location or manufacturing costs. *Anson, Gilkey & Hurd Co. v. S. P. Co.*, 33 I. C. C., 332.

In the territory under consideration there is on all railroads a blanket rate on lumber which applies from the mill to points of final destination. *Wisconsin & Arkansas Lumber Co. v. St. L., I. M. & S. Ry. Co.*, 33 I. C. C., 33. All carriers, tap lines as well as trunk line carriers, participate in these lumber rates, the divisions being based upon the extent of the service rendered by each road in transporting lumber. To take from the trunk line carrier a portion of the lumber rate and apply it to the payment of the cost of the log haul relieves the mill owner in whole or in part of the reasonable cost of transporting his logs to his mills. This is a direct contribution to the mill owner who is the shipper of the lumber. It is none the less a contribution to the shipper because the payment is made to the tap line. The direct and inevitable result is that the mill owner is relieved of the whole or a part of the reasonable cost of getting his logs to his mill by a contribution out of the lumber rate, and this, as already stated, would unjustly discriminate against mill owners who are obliged to bear the full cost of transporting their logs. The Supreme Court in the *Abilene Cotton Oil Case*, 204 U. S., 426, 437, speaking of one of the main purposes of the act to regulate commerce, said:

It forbade all unjust preferences and discriminations * * * and the prohibitions of the act and the punishments which it imposed were directed not only against carriers but against shippers or any person who, directly or indirectly, by any machination or device, in any manner whatsoever, accomplished the result of producing the wrongful discriminations or preferences which the act forbade.

Necessarily in such a blanket adjustment of rates differences in distance are largely disregarded. The rates applying from mills on the main lines of the trunk line carriers apply also from the mills located on their branch lines and from the mills on the tap lines. As has been seen, there is no general practice in this territory of shrinking the trunk lines' lumber rates from the mill points, because of a previous haul of the logs. We find no warrant for requiring the trunk lines against their will to establish milling in transit with the tap lines, under which the rates on lumber applying from the mill points will be readjusted. This whole territory, being blanketed under common rates on lumber from all the mill points within the blanket, it necessarily follows that if a trunk line carrier in this territory adopts or maintains a system of transit for mills located on its own lines, it would subject to undue prejudice and disadvantage the mills on the tap lines with which it connects and has joint rates, unless the trunk line offered them a similar and equal arrangement. But the unjust prejudice would not stop there. It would extend also to the other mills that must get their logs in either over their own private unincorporated logging road, or by

teams over a tram road, or by floating them down a stream, or bringing them in by horse and wagon. As heretofore explained, whether the logs are brought to the mill by a trunk line, by a common-carrier tap line, or by any of the other means just mentioned, the cost is a part of the cost of manufacturing the lumber. But whatever may be the means used for getting the logs to the mill, the work is done and the expense incurred for the same purpose, namely, to have them manufactured into lumber and later shipped out in that form to the markets under a group rate adjustment voluntarily established by the carriers for the express purpose of putting all these mills on a rate parity in the lumber markets. The Commission has long been familiar with the conditions prevailing in this lumber-producing district and the record before us makes it abundantly clear that the only possible result of a milling-in-transit arrangement such as the petitioners here seek, by which the trunk lines will assume for some mills, and not for others, a part of the cost of getting in their logs, will be to undermine the group rate and to take away from such other mills the benefits which the group rate purports to give them.

The case has been presented by the parties in interest in a general way and no instances of alleged undue prejudice arising out of the practices of any individual trunk line have been called to our attention with sufficient definiteness to warrant a finding on a specific case. If any such instances exist or occur, they may be specifically presented.

The petition must be dismissed, and it will be so ordered.

40 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 755.
INDIANA AND ILLINOIS COAL.

Submitted April 28, 1916. Decided July 6, 1916.

Proposed increased rates on bituminous coal in carloads from mines in Illinois and Indiana to points in Illinois, Indiana, Wisconsin, and Michigan found justified, and orders of suspension vacated.

Cassoday, Butler, Lamb & Foster and *George W. Reed* for Illinois Coal Operators Association, Indiana Bituminous Coal Operators Association, and Central Illinois Coal Operators Association.

R. W. Ropiequet for Coal Operators Traffic Bureau of St. Louis, Mo.

N. H. Kendall for Chicago Coal Merchants Association.

C. B. Cardy for Chicago & Eastern Illinois Railroad Company.

A. P. Humburg for Illinois Central Railroad Company.

Ernest S. Ballard for New York Central lines.

W. F. Peter for Chicago, Terre Haute & Southeastern Railway Company.

C. B. Sudborough for Vandalia Railroad Company.

Kenneth F. Burgess for Chicago, Burlington & Quincy Railroad Company.

R. H. Widdicombe for Chicago & North Western Railway Company.

Fred H. Behring for Southern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By schedules contained in tariffs, filed to take effect December 15, 1915, and on various dates thereafter, respondents proposed an increase of 5 cents per net ton in rates for the interstate transportation of bituminous coal in carloads from all mines in Illinois and Indiana to all points in Illinois except certain points on the east bank of the Mississippi River, to points in Indiana and points in the southern peninsula of Michigan and Wisconsin south of the line of the Chicago, Milwaukee & St. Paul Railway from Milwaukee to Madison and east of the line of the Illinois Central Railroad running south from Madison. Upon protests by various associations of coal operators the schedules were suspended until April 13, 1916, and later until October 13, 1916. Similar increases in intrastate

rates in Illinois and Indiana were proposed which are under suspension by orders of the railroad commissions of those states.

The location and grouping of the mines in Illinois and Indiana are well known and need not be described here, especially as the proposed increases in rates do not affect the existing relationship between the rates from the various groups. The principal destination point in issue is Chicago, Ill., but other points beyond Chicago also consume large quantities of coal. Proportional rates are published to Chicago 10 cents lower than the local rates, and it is also proposed to increase these rates 5 cents a ton. The rates to points in Wisconsin and Michigan are usually joint rates made by the addition of local rates or arbitraries to the proportional rates to Chicago. The present local rates per ton of 2,000 pounds from the various groups of origin to Chicago are as follows:

Illinois groups.	Rate.	Indiana groups.	Rate.
Northern Illinois.....	\$0. 57	Clinton.....	\$0. 77
Danville.....	. 74	Brazil.....	. 77
Fulton county.....	. 75	Linton.....	. 8
Springfield.....	. 82	Princeton.....	. 94
Belleville.....	. 97	Boonville.....	. 97
Duquoin.....	. 97	Evansville.....	1. 27
Harrisburg.....	1. 05		
Cartersville.....	1. 05		

The following rates, with approximate average distances, taken from an exhibit filed by one of the respondents, illustrate the present rates on bituminous coal over the routes of actual movement:

To—	From Springfield group.		From Southern Illinois group.		From Clinton group.		From Princeton group.	
	Rate.	Miles.	Rate.	Miles.	Rate.	Miles.	Rate.	Miles.
Chicago.....	(1)	(1)	\$1. 05	324	\$0. 77	188	\$0. 94	275
Peoria, Ill.....	(1)	(1)	(1)	(1)	. 77	187	. 94	267
South Bend, Ind.....	\$1. 00	266	1. 08	349	. 85	215	. 97	315
Fort Wayne, Ind.....	1. 10	303	1. 20	363	. 90	235	.....	.....
Milwaukee, Wis.....	1. 32	311	1. 55	415	1. 27	273	1. 44	360

¹ Intrastate.

The record does not show specific rates and distances to points in Michigan.

The present relationship of rates from most of the Indiana and Illinois mines has existed since 1903. Certain changes were effected in the rates from mines in southern Illinois between 1906 and 1909 without corresponding changes from other mines, and in 1910 there was a general increase of 7 cents per ton in the rates from all mines. The rates thus established are still in effect except for a 3-cent increase permitted from the Harrisburg district, in southern

Illinois, in *Transportation of Bituminous Coal*, 22 I. C. C., 341, in order that the rates from that district might be upon the same general level as the rates from other groups similarly situated.

Respondents contend that this proceeding is really a part of the *1915 Western Rate Advance Case*, 35 I. C. C., 497; 38 I. C. C., 94, and that the rates under suspension would have been included with the rates considered in that case if tariff complications had not prevented their publication. Increases ranging from 5 cents to 10 cents a ton were permitted in the *1915 Western Rate Advance Case*, *supra*, in the rates on coal from mines in Indiana and Illinois to points on and west of the Mississippi River and to points in western trunk line territory north of the line of the Chicago, Milwaukee & St. Paul Railway from Milwaukee to Madison. The increased rates proposed here, particularly the rates proposed to points in Illinois and Wisconsin, are said to be analogous to those rates, as they apply from the same mines and largely over the same routes, and will properly align the rates to points nearer the mines with the increased rates permitted to the more remote points. Increased rates similar to some of those here proposed were suspended and finally disallowed in *The Five Per Cent Case*, 31 I. C. C., 351, 32 I. C. S., 325, but only as a part of a general increase in rates. The rates on coal from mines in Illinois and Indiana were before us only in a general way, and not for movements to particular destinations.

Respondents combine data obtained from the Illinois-Indiana Coal Traffic Bureau with data obtained from reports by the 12 roads participating in the coal traffic involved, for one week in May, 1913, and one week in October, 1913, with the following results relative to all coal transported at the rates under suspension during one year, and to coal transported interstate by six of the principal coal-carrying roads to Chicago:

	All coal.	Coal to Chicago.
Tonnage.....	10,380,880	6,629,548
Total revenue, present rates.....	\$9,557,360	\$5,981,554
Total increase.....	\$519,044	\$331,477
Average weighted haul.....miles..	244	254
Existing average rate per ton.....	\$0.92	\$0.902
Existing average revenue per net ton-mile.....mills..	3.76	3.55
Proposed increase per net ton-mile.....do....	.201	.197
Existing average revenue per gross ton-mile.....do....	2.62	2.55
Proposed increase per gross ton-mile.....do....	.142	.138
Proposed average rate per ton.....	\$0.97	\$0.952
Average net load per car.....tons..	43.36	43.4
Average tare weight per car.....do....	18.45	18.54

Substantially the same method was followed in preparing similar figures in the *1915 Western Rate Advance Case*, *supra*. Some discrepancies are noted by protestants, but on the whole these figures may be said to be fairly accurate.

Elaborate statistics relative to the general financial condition of the railroads operating in this territory were introduced by respondents which had been considered by us in previous cases involving general increases in rates. Protestants show that the present financial condition of these roads is more favorable than at any time since 1907, but respondents reply that present business conditions are abnormally good, that they may not continue good very long, and that experience justifies the prediction that a period of depression will follow during which extensive railroad repairs and replacements, which are being postponed to facilitate the movement of business, must be undertaken.

Respondents contend that careful analysis of their revenues and costs of operation demonstrates that under the present rates bituminous coal does not bear its proper proportion of the cost of operation and fails to yield a fair return on the property investment. A statement of the revenues and costs for one year of the Chicago & Eastern Illinois Railroad, the Chicago, Terre Haute & Southeastern Railway, and the Vandalia Railroad is submitted, from which it is argued that coal yields a return of only 1.24 per cent on the book value of road and equipment, as compared with an average return of 4.82 per cent from all other freight traffic. Under the proposed rates the coal traffic would earn 2.74 per cent on the property investment. Protestants reply, however, that respondents' car-mile earnings disprove their contentions. Taking the five principal carriers, hauling 95 per cent of the coal tonnage to Chicago and beyond, they show that the average earnings per loaded car-mile in 1914 were 16.48 cents, for an average distance of 243 miles, and, including as empty mileage 90 per cent of the loaded mileage, 8.65 cents per loaded and empty car-mile, for an average distance of 462 miles. These earnings are contrasted with earnings of 12.18 cents per loaded car-mile and 8.32 cents per loaded and empty car-mile on all other freight.

Respondents' principal traffic witness testified that the present rates on bituminous coal in Illinois and from Indiana to Chicago.

nt for practically all the increases proposed, are
ch they have any dealings, and are frequently
with efforts to secure reductions in other terri-
made to a number of rates on coal in various
ry, a majority of which apply in territory of
y, and which, in most instances, are higher for
n those in controversy. Numerous cases decided
re cited in which relatively higher rates on coal

The 1916 *Western Rate Advance Case*, *supra*,
hich the average rate was \$1.581 per ton for
327 miles, which yielded average per ton-mile

earnings of 4.59 mills; also *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.*, 29 I. C. C., 428, in which a rate of 70 cents per ton, applicable from the Pittsburgh district to the Mahoning and Shenango valleys, for weighted average distances varying from 87 miles to 93 miles and yielding ton-mile earnings ranging from 7½ mills to 8 mills, was found not unreasonable. Approximately 6,000,000 tons per annum move under the 70-cent rate. Respondents also refer to switching absorptions at Chicago which diminish their revenues. Other testimony and voluminous exhibits relative to the assembling and operating expenses in connection with coal traffic substantially confirm the following statements relative to the same matters in our report in the *1915 Western Rate Advance Case, supra*:

Coal mines are usually located off the main line of the carriers, thus necessitating a switching movement to and from the mines of an average of over a mile; cars when placed on tracks leading to the mines earn no demurrage. * * *

Bituminous coal is not stored at the mines, but is loaded as mined; and because of this and the resulting facts that cars are sometimes ordered and not used, and sometimes loaded and not immediately billed out, and that diversion in transit is necessary in order that coal may be delivered when and as needed, cars in this traffic are kept in use for a longer time, compared with the distance hauled, than is true of the average of other traffic. The cost incident to the assembling and diversion of coal is material. * * * There has been a constantly increasing cost of maintenance of these heavy coal cars, a cost augmented by reason of the injury caused by these heavy cars to other lighter equipment.

Between the month of lowest and the month of highest density of this traffic there is a difference of 89.73 per cent—greater than the difference between the maximum and minimum tonnage of any other particular kind of traffic. This variation indicates that the movement is seasonal; and the fact that miners' contracts are renewed biennially, causing uncertainty in the production, makes for heavy fluctuations in the volume of traffic.

Protestants contend that the proposed rates are unjust and unreasonable in themselves, but cite no rates in comparison, stating that the volume of the coal movement to Chicago is so far in excess of the movement to any other one market as to render comparisons with other rates idle. Their principal objection to the suspended rates apparently is the alleged discrimination which will result from this increase without any increase in rates on coal from the east. They show that by reason of the production of coal south, east, and west of them their market is practically restricted to their own states and points farther north. They contend that their coal competes keenly in this territory with coal from the east, which is of a higher grade than that produced in Illinois and Indiana. It appears that little eastern coal is used in this territory for steam purposes, the demand being supplied by the slack and screenings produced by protestants, but protestants state that such coal is a by-product of the

mining industry, that it must be disposed of as produced, and is generally sold at too low prices for profit. Eastern coal is used in considerable quantity in this territory in the production of gas and coke and in the manufacture of malleable iron, etc., for which purposes it is better adapted than the coal here involved, and thus more valuable. Both eastern coals and Illinois-Indiana coals are used for domestic heating purposes. Protestants state that in order to offset the difference in quality they have gone to heavy expense in the preparation of their coal, but that their efforts to increase their tonnage in competition with eastern coal have been only partially successful.

Respondents assert that the Indiana-Illinois rates to Chicago and the north have never been maintained with relation to the rates from eastern producing sections and that they have no control over the rates from the east. They insist that protestants' ability to compete with eastern coal is not controlled by the freight rates, and cite the rate of \$1.90 a ton on coal from Pittsburgh to Chicago, which is the base rate on coal from the east. It applies for a distance of 468 miles and yields 4.06 mills per ton-mile. The minimum rate from eastern mines to Chicago is \$1.40. The maximum rate of \$2.05 under which a large percentage of the coal shipped to Chicago from the east is transported, applies for an average distance, as shown by respondents, of 580 miles, and yields average ton-mile earnings of 3.53 mills. These rates are compared with the highest rate here proposed to Chicago of \$1.10 for a haul of 324 miles, yielding ton-mile earnings of 3.39 mills.

Considerable testimony was introduced relative to the well-known unprosperous condition of the coal-mining industry in Illinois and Indiana, which it will not be necessary to discuss, as this condition is largely due to overproduction. As was said in *The Illinois Coal Cases*, 32 I. C. C., 659, at page 674—

A careful examination of the whole record has left us under the conviction that the real trouble in this situation is that the coal-mining interests of Illinois have enlarged the physical capacity of their mines to a point where it is in excess of the demand. * * *

In *Monon Coal Co. v. C. & E. I. R. R. Co.*, 34 I. C. C., 221, which involved coal rates from Indiana mines to Chicago, we referred to the statement just quoted, adding that "much that was said in that report applies with equal force here."

We find that the proposed increased rates have been justified. Our orders of suspension will be vacated.

No. 7173.
ARMOUR & COMPANY
v.
CHICAGO & NORTH WESTERN RAILWAY COMPANY
ET AL.

Submitted April 27, 1916. Decided July 6, 1916.

Rate charged for the transportation of live hogs in carloads from Sioux City, Iowa, to East St. Louis, Ill., not shown to have been unreasonable. Complaint dismissed.

H. K. Crafts and *W. W. Manker* for complainant.

F. P. Eyman and *Robert H. Widdicombe* for Chicago & North Western Railway Company.

J. A. Behrle for Chicago & Alton Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the packing-house business and in the purchase and sale of live stock at Chicago, Ill., with additional packing houses at East St. Louis, Ill., and at Sioux City, Iowa. By complaint, filed August 10, 1914, it alleges that the rate of 35 cents per 100 pounds charged by defendants for the transportation of 41 carloads of live hogs shipped January 19, 1912, from Sioux City to East St. Louis, Ill., was unreasonable to the extent that it exceeded a rate of 23.5 cents per 100 pounds. Reparation is asked and the establishment of a reasonable rate for the future. The claim was presented to the Commission informally September 2, 1913.

The shipments were originally consigned to Chicago and moved by way of the Chicago & North Western Railway to Peoria, Ill., where they were diverted to East St. Louis by way of the Chicago & Alton Railroad. No joint rate was applicable and charges were collected in the sum of \$2,544.50 at a combination commodity rate of 35 cents per 100 pounds, 23.5 cents to Peoria and 11.5 cents beyond. A joint rate of 23.5 cents applied on like traffic by three other routes. This was made applicable over the route of movement March 18, 1913, and is still in effect. The distance by the route of movement is 652 miles, compared with 536 miles, 616 miles, and 705 miles, respectively, by the other routes. Defendants are willing to make repara-

tion. Complainant could have used any of the other routes taking the lower rate, but chose the one over which the shipments moved.

The existence of the lower rate for the other routes and the subsequent establishment of that rate for the route of movement do not of themselves warrant condemnation of the rate charged, and upon all the facts disclosed we find that the rate charged is not shown to have been unreasonable.

An order will be entered dismissing the complaint.

No. 7932.

HUNGARIAN MILLING & ELEVATOR COMPANY

v.

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY
ET AL.

Submitted December 7, 1915. Decided June 28, 1916.

Rate charged for the transportation of phosphate of lime in bags from Chicago Heights, Ill., to Denver, Colo., found to have been unreasonable to the extent it exceeded that contemporaneously in effect on this commodity in barrels and boxes. Reparation awarded.

G. H. Work for complainant.

F. Montmorency for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in milling grain at Denver, Colo. By complaint, filed April 19, 1915, it alleges that the charges collected by defendants for the transportation of a carload of phosphate of lime in bags from Chicago Heights, Ill., to Denver, in September, 1913, were unreasonable and unjustly discriminatory. Reparation is asked.

The shipment was made as alleged. The western classification, which governed, provided no specific rating on phosphate of lime in bags, but rated phosphate of lime in barrels or boxes, fifth class. Under a rule in the classification providing higher ratings on packages not otherwise provided for, defendants assessed the third-class rate of \$1.10 on the shipment and collected charges in the sum of

\$336.60 on 30,600 pounds. Effective May 15, 1914, subsequently to the movement, defendant established a fifth-class rating. The fifth-class rate from and to the points involved is 67 cents per 100 pounds. Complainant contends that the rating applied was unreasonable and unjustly discriminatory to the extent that it exceeded the rating contemporaneously applicable on this traffic in barrels or boxes. The measure of the rate charged is not assailed.

Complainant asserts that the transportation of phosphate of lime in bags at time of shipment was no more hazardous than its transportation in barrels; that packed in bags it loads compactly and occupies less space in the car than the same quantity in barrels; and that other articles such as sugar and salt take the same rating in bags as in barrels.

Defendants' witness states that the method of packing phosphate of lime formerly prescribed by the classification was adopted by the Committee on Uniform Classification upon the recommendation of manufacturers and shippers of the commodity; that after the shipment in controversy moved, complainant requested the same rating on phosphate of lime in bags as in barrels and boxes; that subsequent consultation between manufacturers and carriers disclosed that the process of manufacture had so advanced that a slight amount of moisture would not affect the commodity and that it could be transported safely in bags; and that the fifth-class rating was thereupon applied to the commodity in bags.

We find that the rating applied was unreasonable to the extent it exceeded the rating contemporaneously applicable on this traffic in barrels and boxes from and to the same points; that complainant made the shipment as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and the charges which would have accrued at the rating herein found reasonable; and that it is entitled to reparation in the sum of \$131.58, with interest. The present rating on this traffic having been in effect more than two years, no order for the future is deemed necessary.

No. 7505.
MUTUAL WHEEL COMPANY
v.
**NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY
ET AL.**

Submitted May 13, 1915. Decided July 6, 1916.

Charge of \$7 per car imposed by defendants at Paducah, Ky., for switching carloads of logs, bolts, or billets, originating in Tennessee, from the Tennessee River to complainant's plant, found to be unjustly discriminatory. Reparation denied.

J. R. Walker and W. F. Bradshaw for complainant.
C. D. Drayton for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of carriage wheels at Moline, Ill., and operates a plant at Paducah, Ky., for the manufacture of club-turned spokes. By complaint, filed November 25, 1914, it alleges that the charge of \$7 per car imposed by defendants at Paducah for switching 104 carloads of logs or billets from the Tennessee River incline of the Nashville, Chattanooga & St. Louis Railway to complainant's plant located on the tracks of the Illinois Central Railroad, during the period from September 18, 1912, to September 11, 1914, was unreasonable and unjustly discriminatory to the extent that it exceeded \$2. An allegation that the published rate was \$5 per car was abandoned at the hearing. Reparation is asked. Four of the shipments were delivered more than two years prior to the filing date of complaint and are therefore barred by the statute of limitation.

The shipments consisted of bolts and billets which originated at landings on the Tennessee, Cumberland, and Ohio rivers in Kentucky and Tennessee, and which were transported by barges to Paducah and there loaded upon cars placed by the Nashville, Chattanooga & St. Louis Railway on its river incline. The cars were then switched by that carrier to its interchange track with the Illinois Central Railroad and by the Illinois Central to complainant's plant. The charge assailed was composed of a charge of \$5 from the incline to the interchange track and a charge of \$2 thence to complainant's

plant. The switching movement was entirely intrastate, and defendants contend that the charges imposed for it are not subject to our jurisdiction.

The river barges that serve Paducah do not file tariffs with the Commission and are not defendants. The charges for the water movement were paid to the barge companies and separate contracts were made with defendants for the switching service to complainant's plant. The transportation was not under through bills of lading or under any common control, management, or arrangement for a continuous carriage or shipment.

The bolts and billets which originated in Kentucky moved water and rail intrastate and are beyond our jurisdiction. The fact that practically all of them were manufactured into club-turned spokes at Paducah and later shipped to Moline does not, as complainant contends, cause our jurisdiction to attach to the antecedent intrastate switching movement. Defendants contracted to switch the traffic to complainant's plant and delivery at that point completed their contract. The subsequent movement of spokes from complainant's plant to Moline was separate, distinct, and under a new contract.

The record shows that when the traffic originating in Tennessee was delivered to the water carrier it started in transportation, water and rail, to complainant's plant in another state. Switching at Paducah as a part of interstate transportation is subject to our jurisdiction. *Texas & N. O. R. R. Co. v. Sabine Tram Co.*, 227 U. S., 111; *Ohio R. R. Comm. v. Worthington*, 225 U. S., 101.

Complainant's plant is $3\frac{1}{4}$ miles from the river incline: 1.6 miles over the Nashville, Chattanooga & St. Louis Railway to the joint interchange track and 1.65 miles beyond. When a loaded barge arrives at Paducah, the Nashville, Chattanooga & St. Louis is notified by complainant or the barge captain and thereupon places an empty car on the incline for loading. The following day it switches the loaded car to the interchange track, whence the loaded car is switched to complainant's plant and the empty car returned. No industry is located on the Illinois Central Railroad between the interchange track and complainant's plant.

Complainant shows that the Nashville, Chattanooga & St. Louis charges \$1 per car for the switching of all traffic at Paducah from its river incline to industries located on its own rails and the Illinois Central imposed the same charge for a similar service at Brookport, Ill., on the north bank of the Ohio River, opposite Paducah. Carriers serving Cairo, Thebes, Metropolis, and Joppa, Ill., also charge \$1 per car for switching traffic from their river inclines to industries located on their own rails. Complainant buys logs and bolts at river landings in Tennessee in competition with J. W. Little & Company,

spoke manufacturers at Paducah, whose plant is located on the rails of the Nashville, Chattanooga & St. Louis beyond the point of interchange with the Illinois Central Railroad. The charge to J. W. Little & Company's plant is lower than the charge to the point of interchange with the Illinois Central Railroad contrary to the long-and-short-haul rule of the fourth section of the act, and the adjustment apparently is not protected by any application for relief now on file with the Commission. Complainant also buys logs and bolts at Tennessee River landings in competition with lumber dealers located at Brookport.

Complainant admits that the \$1 charge for switching from the river incline to industries located on defendant's rails is unremunerative. The Nashville, Chattanooga & St. Louis contends that it does not pay the operating cost. The \$1 charge took effect, interstate, March 23, 1913, and was established at the request of the Paducah Chamber of Commerce, in order to place Paducah industries on a parity with industries located at Brookport, Metropolis, and other Ohio River points near Paducah. It was not established to the interchange tracks of the Illinois Central Railroad, but was limited to industries located on the rails of the Nashville, Chattanooga & St. Louis. It was predicated on the assumption that that defendant would secure a line haul on outbound products of inbound raw material. One hour is consumed in switching a car on and off of the cradle of the incline. The actual wages of the switching crew and cradle adjusters for one hour is \$2.01. When other expenses are added, it is apparent that the \$1 charge which this defendant maintains to industries located on its own rails is not as high as the cost of the service warrants. Exhibits introduced by it show that the \$5 charge assailed is in line with the charge that obtains generally for similar intraterminal switching services at other points in the south.

We find that the switching charge from the Tennessee River incline to complainant's plant on traffic originating in Tennessee was, and for the future will be, unjustly discriminatory to the extent that it exceeded and exceeds by more than \$2 per car the charge contemporaneously maintained at Paducah by the Nashville, Chattanooga & St. Louis Railway for switching logs, bolts, or billets, originating at river landings in Tennessee, from its Tennessee River incline to industries located on its own rails. We find that the allegation of unreasonableness has not been sustained. There is no such proof of damage to complainant as would warrant an award of reparation.

An order will be entered accordingly.

CLEMENTS and HALL, *Commissioners*, dissent.

No. 8262.
JOHN B. A. KERN & SONS
v.
**CHICAGO, MILWAUKEE & ST. PAUL RAILWAY
COMPANY ET AL.**

Submitted November 24, 1915. Decided June 22, 1916.

Refusal of the Washington & Old Dominion Railway to permit the reconsignment of a mixed carload of flour and wheat shipped from Milwaukee, Wis., to Vienna, Va., and from Vienna to Leesburg, Va., at the through rate from Milwaukee to Leesburg, plus a charge of \$5 for the services incident to the reconsignment, where the contents of the car remained unchanged, where no out of line haul was required, and where the request for reconsignment was received within a reasonable time after the arrival of the car at Vienna, was unlawful and unreasonable. Reparation awarded.

George A. Schroeder for complainants.

No appearance for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are John F. Kern and Adolph L. Kern, copartners, engaged in the flour-milling business at Milwaukee, Wis., under the firm name of John B. A. Kern & Sons. By complaint, filed August 25, 1915, as amended at the hearing, they allege that the charges imposed by defendants for the transportation during March, 1915, of one carload of flour and feed shipped from Milwaukee to Vienna, Va., and reconsigned at that point to Leesburg, Va., were unreasonable to the extent that they exceeded the charges which would have accrued on the basis of the through rate from Milwaukee to Leesburg, plus a reasonable charge, not exceeding \$2, for the extra services incident to the reconsignment.

The shipment consisted of 13,755 pounds of flour and 28,000 pounds of mill feed in bags and moved: Chicago, Milwaukee & St. Paul Railway; Elgin, Joliet & Eastern Railway; New York Central Railroad; Pennsylvania Railroad; Philadelphia, Baltimore & Washington Railroad; and Washington & Old Dominion Railway. Vienna and Leesburg are local points on the line of the last-named carrier which is hereinafter called defendant. The car was detained en route at Bennings, D. C., under quarantine regulations of the state of Vir-

ginia and did not arrive at Vienna until April 23, when the consignee refused to accept it because of the delay. Defendant notified complainants of the refusal on the same day by telegram, whereupon complainants requested the Milwaukee agent of the Empire line to reconsign the shipment to Leesburg. The request was received by defendant on April 24 and it was executed on the same day.

The through reshipping or proportional rate applicable on flour and mill feed, in mixed carloads, from Milwaukee to Vienna was 19.5 cents per 100 pounds, minimum 40,000 pounds; 14.5 cents per 100 pounds from Milwaukee to Potomac Yard, Va., and a differential of 5 cents per 100 pounds beyond. The 5-cent differential was published as applicable to flour. A differential of 3 cents was maintained on mill feed, but under the rules to which the tariff was subject the rate on the highest rated article in the shipment applied to the entire shipment. The 14.5-cent component was established January 15, 1915, in place of a 13.7-cent component that had long obtained. The tariffs publishing these proportional rates to Potomac Yard authorized the application of the basing rates in effect at the date of the inbound movement of the grain to the outbound product of grain milled at Milwaukee. The shipment was entitled to the 13.7-cent component to Potomac Yard, and a through rate of 18.7 cents to Vienna. Charges were collected in the sum of \$110.84 at a rate of 18.7 cents to Vienna and at local rates of 10 cents per 100 pounds on flour, 5 cents on feed, for the movement from Vienna to Leesburg, with a demurrage charge of \$5 at Leesburg. The freight bill shows that \$195.95 was collected altogether, but \$75.11 was collected for a further movement of the car by the Southern Railway under new billing, from Leesburg to Harrisonburg, Va., which movement is not involved, while \$10 was collected as a result of an error in the addition of the items on the bill. The Southern Railway should immediately refund this \$10 overcharge, with interest.

The authorized differentials, Potomac Yard to Leesburg, were 6 cents per 100 pounds on flour and 3 cents on feed. The through rate from Milwaukee to Leesburg, which would have been applicable if the shipment had been billed to Leesburg originally, was, therefore, 19.7 cents per 100 pounds. This rate did not apply to complainants' shipment as it was billed because defendant's tariff did not authorize reconsignment.

Defendant did not appear at the hearing. Its answer alleges that the shipment was an "order notify" shipment, and that the order for reconsignment was irregular and insufficient, as complainants failed to surrender the original bill of lading with the order. But this contention is concluded by our decision in *Morse Lumber Co. v. L. & N. R. R. Co.*, Docket No. 6865, unreported. The same answer

alleges that the shipment had been placed for delivery at Vienna before the request for reconsignment was received, so that the original "bill of lading contract" had been completed and the haul from Vienna to Leesburg was a separate transaction in the nature of an intrastate movement. This contention also is unsound. It does not appear that the shipment had been delivered, and neither the rights nor the obligations of the respective parties to the transaction terminated with the placement of the car for delivery. Complainants' request for reconsignment was received the day after the shipment reached Vienna. We have held in numerous cases that reasonable notice of reconsignment or diversion should be given, but find that the notice given was reasonable. Defendant further alleges that it has established no reconsigning rules because of the very limited number of reconsignments required on its line, to which complainants reply that they do an extensive business in Virginia and have made numerous shipments to points on defendant's line.

The tariffs of each of the other carriers which participated in the line haul of the shipment permitted reconsignment at the through rate. No charge for that service is made by certain of these carriers and the charge made by others in no instance exceeds \$5 per car. In *Central Commercial Co. v. L. & N. R. R. Co.*, 33 I. C. C., 164, we found that a reasonable charge for a similar service would be \$5.

We find that where the contents of the car remain unchanged, where the change of destination or route does not involve an out of line haul, and request for reconsignment is received within a reasonable time after the arrival of the car at the original destination, defendant's tariff rules are unreasonable in that they do not provide for reconsignment of flour and feed, in straight or mixed carloads, on the basis of the through rate from the point of origin to the new destination plus \$5 per car as a maximum charge for the extra service performed, which basis we find to be reasonable.

We further find that complainants made the shipment as described and paid and bore freight charges thereon for the transportation to Leesburg in the sum of \$105.84; that they have been damaged to the extent of the difference between the charges paid and those which would have accrued on the rate basis herein found reasonable; and that they are entitled to reparation in the sum of \$18.58, with interest from May 21, 1915.

An order will be entered in accordance with these findings.

No. 7937.
**MARION G. DINSMORE, TRADING AS T. M. DINSMORE
& COMPANY,**
v.
**PHILADELPHIA, BALTIMORE & WASHINGTON
RAILROAD COMPANY.**

Submitted November 6, 1915. Decided June 28, 1916.

Demurrage charges collected for the detention of a carload shipment of hay at Baltimore, not found unreasonable. Complaint dismissed.

George Washington Williams for complainant.

Bernard Carter & Sons for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a retail dealer in hay, grain, and other commodities at Baltimore, Md. By complaint, filed April 22, 1915, he alleges that the demurrage charges collected by defendant for the detention of a carload shipment of hay at Baltimore during November, 1913, were unjust and unreasonable. Reparation is asked.

The shipment originated at White Hall, Md., and was consigned to complainant at Baltimore. It was placed for delivery at 3 p. m. on November 26, 1913, and complainant was notified at 4 p. m. the same day. Complainant did not unload the car, but at 5 p. m. on November 29, released it for reshipment to Norfolk, Va., under a new bill of lading. A demurrage charge of \$1 was collected on account of the detention of the car one day beyond the first 24 hours, the other day having been a legal holiday. Defendant's demurrage rules provided 24 hours' free time on cars held for reconsignment or reshipment in the same car and defined reshipment as "the making of a new contract of shipment by which under a new rate the consignee forwards the same car to another destination." Complainant contends that it is unreasonable to allow 48 hours' free time in which to load or unload and only 24 hours' free time for reshipment.

The demurrage rules applied were prepared by a committee of the National Association of Railway Commissioners, and have been approved in *Michigan Mfrs. Asso. v. P. M. R. R. Co.*, 31 I. C. C., 329, 330, and cases therein cited. Complainant refers to congestions encountered by shippers, but offers no evidence sufficient to warrant a change in the rules. He also fails to show that the free time period allowed was unreasonable.

An order will be entered dismissing the complaint.

No. 7628.

DALLAS CHAMBER OF COMMERCE, FREIGHT BUREAU
DEPARTMENT, ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted February 9, 1916. Decided June 27, 1916.

Certain carload commodity rates from St. Louis to points in northeast Texas found unreasonable to the extent of 5 cents per 100 pounds, and from Kansas City to the same points to the extent that they are not as much as 5 cents per 100 pounds less than the rates contemporaneously maintained from St. Louis.

S. H. Cowan for complainants.

G. S. Maxwell for Dallas Freight Bureau.

E. P. Byars and *R. O. McCormack* for Fort Worth Freight Bureau.

S. H. Cowan for Denison Chamber of Commerce and Paris Chamber of Commerce, interveners.

George T. Atkins, jr., for Shreveport Chamber of Commerce, intervener.

J. C. Dillard and *W. E. Edgar* for Chamber of Commerce of Waco, intervener.

W. V. Hardie for Oklahoma Traffic Association, intervener.

Preston Martin for Weatherford Chamber of Commerce.

R. D. Sangster for Commercial Club of Kansas City, Mo., and Commerce Club of St. Joseph, Mo., interveners.

J. A. Morgan for Chamber of Commerce, Houston, Tex., intervener.

Stewart, Bryan & Williams and *P. W. Coyle* for Business Men's League of St. Louis, intervener.

U. S. Pawkett for Jobbers, Manufacturers League, and Manufacturers Club of San Antonio, Tex., interveners.

Edward F. Hollies for Texarkana Freight Bureau, intervener.

T. J. Norton; Fred H. Wood; H. M. Garwood; W. F. Dickinson; N. H. Lassiter; E. A. Haid; E. B. Perkins; A. L. Burford; Thomas Bond; H. G. Herbel; George Thompson; J. M. Souby; J. R. Christian; C. S. Burg; Thompson & Barwise; Andrews, Streetman, Burns & Loge; and Wilson, Dabney & King for defendants.

REPORT OF THE COMMISSION.

MEYER, *Chairman*:

Complainants, the Freight Bureau Department of the Dallas Chamber of Commerce and the Fort Worth Freight Bureau, are organizations composed of merchants, dealers, and shippers at Dallas and Fort Worth, Tex.

By complaint, filed January 2, 1915, it is alleged that the rates applied for the transportation of freight traffic in carloads from St. Louis and Kansas City, Mo., and points beyond from which rates are made with relation to the rates from St. Louis and Kansas City, to Dallas and Fort Worth are unjust and unreasonable, in violation of section 1, and unduly prejudicial as compared with the rates from the same originating points to Shreveport, La., and Texarkana, Tex., in violation of section 3 of the act to regulate commerce. At the hearing the complainants directed their testimony mainly to the carload rates on the commodities hereinafter referred to.

Representatives of various commercial organizations and shippers of St. Louis, Kansas City, St. Joseph, Mo., Texarkana, Ark., Shreveport, La., Oklahoma City, Okla., Houston, Denison, Paris, Weatherford, Waco, Tyler, and San Antonio, Tex., appeared at the hearing. Some intervened in support of the complaint, while others opposed it. St. Louis, Kansas City, and St. Joseph shippers urged that if any reductions should be brought about in the carload commodity rates as the result of this complaint similar reductions should be made in the less-than-carload rates. Oklahoma City shippers urged that if reductions were made in the rates to Dallas and Fort Worth the interests of Oklahoma City and other Oklahoma points intermediate to the Texas cities should be taken into account, and that ultimately such reductions should be made in the rates to these points as would preserve a fair relationship between the rates to the Oklahoma points and to Texas cities. Paris and Denison, which are situated near the northern boundary of the state of Texas and would inevitably share in the benefits of any reductions made in the rates to Dallas and Fort Worth, supported the complaint. Tyler, which is situated about 100 miles east of Dallas, also supported the complaint, but its petition of intervention was not filed until the hearing and it was then too late to enlarge the scope of the complaint. The cities of Houston, Waco, Weatherford, and San Antonio, which are south or west of Dallas and Fort Worth, opposed the petition for reductions to Fort Worth and Dallas unless certain reductions should also be accorded to these more distant points. The purpose of the intervention of Shreveport in the case was to show that the carload commodity rates applied to that point were due to competitive conditions and natural advantages possessed by Shreveport and not to any act of undue preference on the part of the railroads serving

that city. The scope of this report will be confined to a consideration of the reasonableness of rates to northeast Texas as defined herein. To the extent that the petitions of intervention pray for a readjustment of rates to other points than are included in northeast Texas or of rates other than the carload rates specifically referred to by complainant they can not be considered on the present record.

The effect of the complaint and the evidence offered in its support is to ask the Commission to require the defendant railroads to reduce the carload commodity rates from St. Louis and Kansas City and all points basing thereon to a portion of the state of Texas described by the complainants as northeast Texas. This section of the state is bounded on the north by the Texas-Oklahoma state line; on the west by a line commencing at Ringgold, Tex., on the north and extending southeasterly on the west side of the Chicago, Rock Island & Pacific Railway from Ringgold to Fort Worth, thence southerly along the west side of the Gulf, Colorado & Santa Fe Railway to Cleburne, Tex., on the south by a line drawn thence easterly just south of Midlothian, Waxahachie, Bardwell, Kaufman, Mineola, Longview, and Marshall to the Texas-Louisiana state line and on the east by that state line. These boundaries are determined by the positions of the railroads that serve Dallas and Fort Worth from the north and east, and the reductions to the majority of the other points in this group will be made necessary by the requirements of the fourth section of the act, if the reductions are made to Dallas and Fort Worth. This portion of Texas is an exceedingly populous and prosperous portion of the state, about 200 miles in length from east to west and 100 miles in width from north to south. It contains within its boundaries two of the largest cities in Texas, Dallas and Fort Worth, and many other important cities, among which are Denison, Paris, Marshall, Jefferson, Sherman, and Greenville.

We show below the class rates now applicable from St. Louis and Kansas City to the complaining cities in Texas and to Shreveport and Texarkana, and the existing differences between the class rates to Shreveport and Dallas:

Class rates from—	1	2	3	4	5	A	B	C	D	E
St. Louis to—										
Shreveport.....	127	111	96	82	65	69	55	47	41	34
Texarkana.....	127	111	96	82	65	69	55	47	41	34
Dallas and Fort Worth.....	147	125	104	96	75	79	70	58	46	39
Differences Shreveport less than Dallas.....	20	14	8	14	10	10	15	11	5	5
Kansas City to—										
Shreveport.....	127	111	96	82	65	69	55	47	41	34
Texarkana.....	127	111	96	82	65	69	55	47	41	34
Dallas and Fort Worth.....	127	111	96	80	70	72	65	53	41	34
Differences Shreveport less than Dallas.....	0	0	0	7	5	3	10	6	0	0

The complainants ask that the carload commodity rates from St. Louis to Dallas and Fort Worth and all other points included in so-called northeast Texas be reduced to such a level that the commodity rate on any article will not exceed the commodity rate on the same article to Shreveport by more than the class rate to Dallas and Fort Worth on the class to which the commodity belongs exceeds the corresponding class rate to Shreveport. The petitioners seek also to have applied from Kansas City to all points in this group the same carload commodity rates as are contemporaneously effective from Kansas City to Shreveport. Below are shown the rates on 87 commodities which are representative of the carload commodity rates concerning which complaint is made from St. Louis and Kansas City to Shreveport, and to Dallas as representative of the destinations in northeast Texas. We show also in a parallel column the proposed rates from St. Louis to Dallas:

Carload commodity rates from St. Louis and Kansas City to Shreveport, La., compared with present and proposed rates to Dallas, Tex.¹

Commodity.	St. Louis to—			Kansas City to—	
	Shreveport.	Dallas—		Present to Shreveport; proposed to Dallas.	Present to Dallas.
		Present.	Proposed.		
Agricultural implements.....	50	76	60	50	60
Agricultural implements and vehicles, mixed.....	59	85	69	59	78
Agricultural implements (hand).....	61	87	71	61	80
Threshers and engines.....	50	85	60	50	60
Ammonia.....	65	85	75	65	78
Binder twine.....	50	62	60	50	55
Ammunition.....	65	96	73	65	88
Shot.....	45	75	55	45	70
Bagging and ties.....	25	37	35	25	32
Bags and bagging, burlap.....	48	60	62	48	63
Clayed and cotton bags.....	53	60	67	53	63
Crackers, cakes, etc.....	49	82	63	49	75
Baking powder.....	68	89	82	68	82
Oil barrels.....	41	50	46	41	45
Ginger ale.....	43	60	53	43	55
Candles.....	63	75	73	63	70
Canned goods.....	33	51	43	33	46
Catsup, horse-radish.....	40	58	51	40	53
Cement plaster board.....	22	40	27	22	35
Rope.....	45	88	59	45	81
Crockery and queensware.....	47	75	57	47	70
Wire, iron and steel.....	31	56	41	31	51
Fence gates, stretchers, etc.....	33	58	43	33	53
Grapes.....	65	85	75	65	78
Dried beans.....	44	58	54	44	62
Potatoes.....	39	58	50	39	53
Green beans.....	47	58	58	47	58
Green apples.....	45	62	56	45	62
Potatoes and onions, mixed.....	44	58	55	44	53
Dried fruits.....	69	85	79	69	78
Apples and peaches, dried or evaporated.....	47	62	58	47	62
Furniture.....	60	85	75	60	78
Common chairs.....	60	102	68	60	94
Cedar chests and matting boxes.....	60	85	70	60	78
Fruit and jelly glasses.....	52	96	66	52	89
Lamp chimneys.....	59	104	67	59	96
Glucose.....	30	49	40	30	44
Grading and road-making implements.....	52	79	62	52	73

¹ In a few instances the rates given are class rates.

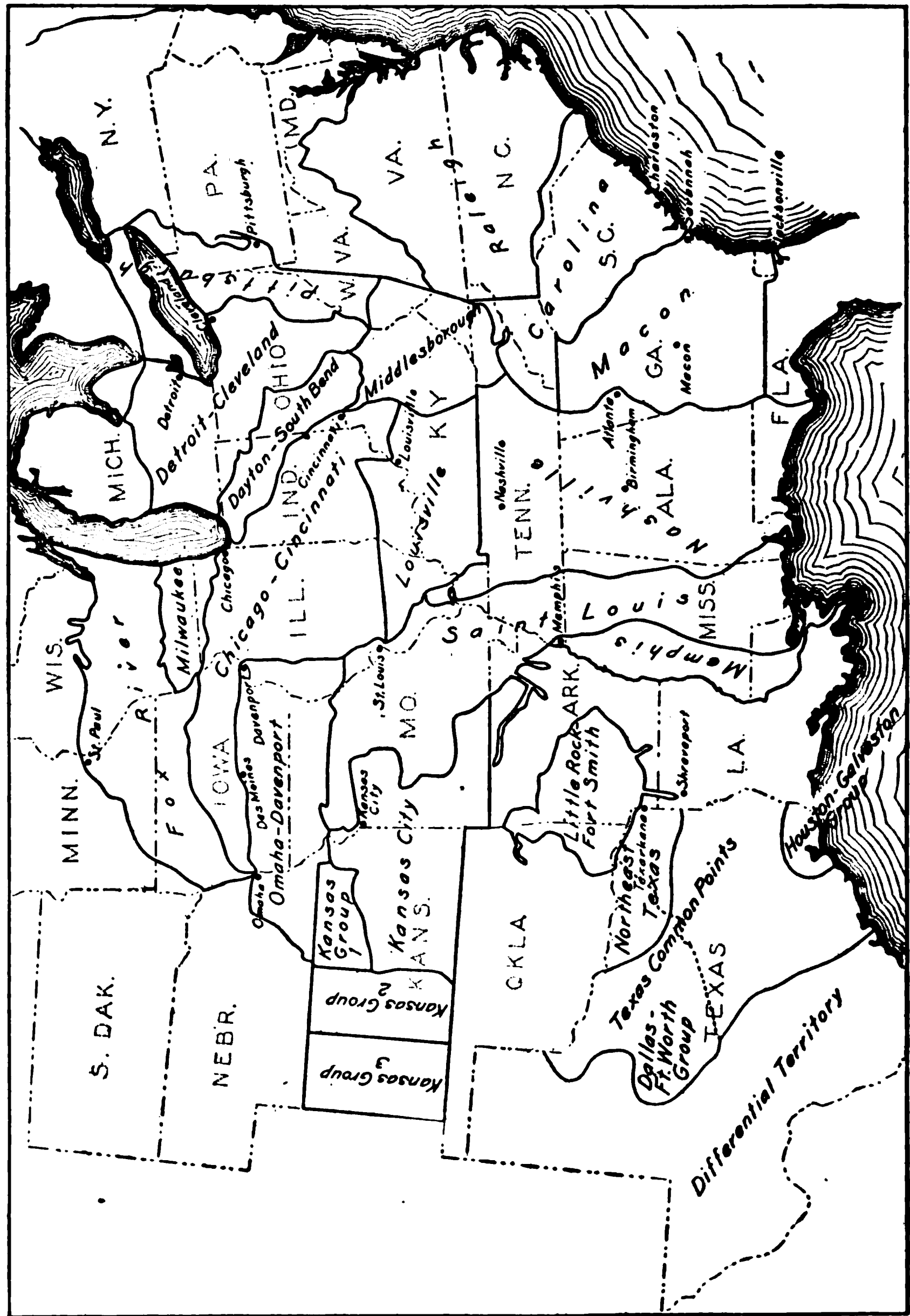
Carload commodity rates from St. Louis and Kansas City to Shreveport, La., compared with present and proposed rates to Dallas, Tex.—Continued.

Commodity.	St. Louis to—			Kansas City to—	
	Shreveport.	Dallas—		Present to Shreveport; proposed to Dallas.	Present to Dallas.
		Present.	Proposed.		
Sugar and sirup.....	35	49	45	35	44
Starch.....	45	62	56	45	57
Soap and soap powder.....	37	58	48	37	53
Agricultural lime, insecticides, etc.....	33	75	43	33	70
Iron, angle, band, bar, rod, and skelp.....	30	60	40	30	55
Horse and mule shoes.....	32	67	42	32	62
Steel piling.....	30	60	40	30	55
Hinges, door hangers, and rails.....	40	75	50	40	70
Roofing, and sheet iron or steel.....	33	60	43	33	55
Tank material, iron or steel.....	30	60	40	30	55
Carpet lining.....	47	62	58	47	57
Beer.....	36	53	47	36	48
Fruit sirups.....	65	80	75	65	75
Machinery and machines.....	52	79	62	52	72
Lawn mowers.....	54	96	68	54	89
Minced meat, condensed.....	33	49	43	33	44
Condensed milk.....	33	54	43	33	49
Peanuts.....	50	96	60	50	89
Linseed oil.....	41	75	51	41	70
Paints, in oil.....	38	55	48	38	50
Latharge.....	38	65	48	38	50
Paper articles, n. o. s.....	60	80	70	60	75
Automatic register paper.....	66	80	76	66	75
Binder's board.....	45	70	55	45	65
Envelopes.....	60	80	74	60	73
Pulpboard and strawboard.....	45	60	55	45	55
Cash tabs and sales books.....	60	80	70	60	75
Printing paper.....	40	60	50	40	55
Tollet paper.....	45	75	55	45	70
Wrapping paper.....	45	60	55	45	60
Wall paper.....	60	80	74	60	73
Roofing paper.....	35	58	46	35	53
Paving pitch and coal tar.....	27	40	32	27	35
Sheet iron or steel pipe (straight or spiral seams).....	35	62	45	35	57
Sewer pipe or drain tile.....	25	39	30	25	38
Pumps and parts.....	33	65	43	33	60
Scales, indicators, and beams.....	65	80	75	65	75
Salt cake (crude sulphate of soda).....	37	75	47	37	.....
Soda.....	37	51	47	37	.....
Soda, lye, potash, etc.....	37	63	47	37	58
Stoves and stove furniture.....	50	79	60	50	72
Gas and gasoline stoves.....	54	79	64	54	72
Tin cans, pails, and buckets.....	55	88	69	55	81
Tin plate.....	40	75	50	40	70
Axes.....	58	79	68	58	72
Toy wagons, children's.....	69	85	79	69	78
Woodenware and fiberware.....	60	88	74	60	81
Mineral wool.....	47	62	58	47	57
Wheelbarrows.....	58	79	68	58	72

The carload commodity rates from St. Louis to Texarkana are the same as the rates to Shreveport except as to a few commodities upon which the rates to Shreveport are limited by combination upon the lower Mississippi River crossings. Upon such commodities the order in *Texarkana Freight Bureau v. St. L., I. M. & S. Ry. Co.*, 28 I. C. C., 569, authorized the carriers to continue rates to Texarkana not more than 6 cents per 100 pounds higher than to Shreveport. The rates from Kansas City to Texarkana are apparently in all instances the same as the rates from St. Louis as the result of the same decision. The rates from St. Louis to Dallas given above are the rates to all

40 I. C. C.

Texas common points, which, with the exception of a small group of points in the vicinity of Houston and Galveston and a small group of points near Texarkana, include all points in Texas east of a line



beginning just west of Acme, Tex., near the north boundary of the state and running in a southwesterly direction through the state to Corpus Christi on the Gulf of Mexico. The rates to the group of
40 I. C. C.

points near Texarkana which are less than to other Texas common points have been reduced as the result of combinations made on Texarkana, and the rates to the Houston and Galveston group have been reduced either by combination on New Orleans or to meet water-and-rail competition from the Atlantic seaboard, as explained in *Dallas Freight Bureau v. A. & N. W. R. R. Co.*, 9 I. C. C., 68. Rates from Kansas City to Dallas shown above are not the rates to Texas common points, but are lower than the common-point rates. Dallas and Fort Worth lie, as to traffic from Kansas City, within what is known as the Dallas-Fort Worth group. This includes a large section of Texas bounded on the north by the Texas state line and on the west by the western boundary of Texas common-point territory from Acme to Menard. This boundary of the district runs northeasterly from Menard south of Hamilton and east of Hillsboro, Terrell, Greenville, and Paris to the Texas-Oklahoma state line. All points within this territory take the same class and commodity rates from Kansas City and certain other points basing on Kansas City. The conditions which gave rise to the Texas common-point territory are described in our report in *Dallas Freight Bureau v. M., K. & T. Ry. Co.*, 12 I. C. C., 427, and will not be repeated here. The Dallas-Fort Worth group appears to have been taken out of Texas common-point territory on traffic from Kansas City in recognition of the fact that points within this district are nearer to Kansas City than are the other towns included within common-point territory.

The rates from a very large section of the United States to Texas common points are made with relation to the rates from St. Louis. The different territories of origin are grouped and rates from these groups are made by adding or subtracting fixed differentials to or from the St. Louis rates. The map published herewith shows the various groups of origin and shows also the destination groups in Texas hereinbefore described. The groupings of the territory of origin do not appear to have been made with a view to relating the rates from these groups to the rates from St. Louis proper. For example, the Memphis group extends for more than 400 miles along the east side of the Mississippi River, but does not include the important Mississippi River cities of Vicksburg, Natchez, Baton Rouge, and New Orleans. All points in the Memphis group take rates to Texas common points less than the rates from St. Louis. The differentials of Memphis under St. Louis on business to Texas are:

Class -----	1	2	3	4	5	A	B	C	D	E
Differential --	10	10	8	7	5	7	5	5	5	5

while the differentials of Vicksburg, Natchez, Baton Rouge, and New Orleans under St. Louis are:

Class -----	1	2	3	4	5	A	B	C	D	E
Differential --	10	10	10	9	6	7	6	6	6	6

Probably but a small percentage of the traffic from St. Louis proper passes through any part of Memphis territory. Similarly, the rates from the Macon group, which includes about 90 per cent of the state of Georgia, are made differentials over St. Louis, although little, if any, traffic from this group to Texas points ever passes through St. Louis. There is, however, a very large group known as the St. Louis group, stretching from the northeast corner of the state of Kansas, southeasterly through Missouri, Illinois, Kentucky, Tennessee, and Mississippi to the Gulf of Mexico. This zone is of very irregular shape but is over 800 miles long and from 50 to 150 miles in width. The rates to Texas from the more distant groups may be considered as properly having some relation to the rates to Texas from the St. Louis group, for this is a zone the center line of which would form approximately 120 degrees of the arc of a circle passing around the north and east side of the state of Texas from 400 to 500 miles from the border. Across this zone nearly all traffic from defined territories must pass in order to reach Texas. The grouping, therefore, of these defined territories, which might be considered arbitrary or even absurd as related to St. Louis proper, appears rational when the positions of these groups are considered with regard to the St. Louis group. With regard to the propriety of the grouping referred to, however, we express no opinion.

Complainants' proof was directed mainly against the rates from St. Louis proper. The rates and the distances to Dallas and Fort Worth were contrasted with the rates and distances to Shreveport, apparently with the idea that if undue discrimination could be shown in this rate relationship against Dallas and Fort Worth the same discrimination must be presumed to exist as to the rates from all points in the St. Louis group and in defined territories from which rates are made with relation to the rates from this St. Louis group. The short-line distance from St. Louis proper to Shreveport is 562 miles, while the average of the short-line distances to Dallas and Fort Worth is 696 miles. It is perfectly clear that, considering St. Louis alone as a point of origin and contrasting the rates from that point to Shreveport with the rates to Dallas and Fort Worth, the existing difference in rates is not justified by the difference in distance. It is necessary to take into account the conditions which have brought about the present level of commodity rates to Shreveport. Some of these rates from St. Louis to Shreveport are made by combination upon one or more of the lower Mississippi River crossings. Shreveport is 172 miles from Vicksburg, 188 miles from Natchez, 227 miles from Baton Rouge, 304 miles from New Orleans, 181 miles from Lake Charles, La., and 280 miles from

Galveston, Tex. The class rates from Vicksburg, Baton Rouge, Natchez, and New Orleans to Shreveport are as follows:

Class -----	1	2	3	4	5	A	B	C	D	E
Rate-----	60	50	40	30	22	25	20	17	16	15

while the class rates from Lake Charles to Shreveport are:

Class -----	1	2	3	4	5	A	B	C	D	E
Rate-----	40	38	30	25	20	21	19	18	16	15

Some of the exhibits introduced by the Shreveport interests were intended to show that the class rates from these lower Mississippi River crossings to Shreveport correspond fairly with other class rates for like distances in the same territory over some of the same railroads and under fairly similar circumstances. As to this claim we here express no opinion. In our report concerning *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, we dealt with the rates from St. Louis to Vicksburg, Natchez, Baton Rouge, and New Orleans. The influence of the Mississippi River on these rates was discussed and it was found that the depressed rates made by the rail lines from St. Louis to these lower Mississippi River crossings had been brought about by water competition on the Mississippi River. The through commodity rates from St. Louis to Shreveport which are affected by the combination on these crossings were recognized by the Commission as depressed below a normal level in our report in the *Texarkana Case, supra*. In that case, as hereinbefore stated, the carriers were authorized to continue such lower rates to Shreveport and higher rates to Texarkana, an intermediate point. A check made of tariffs on file with this Commission, however, shows that on the 87 representative commodities named in this report the combination of the rates from St. Louis to one or more of these crossings with the rate thence to Shreveport produces a lower total rate than the present published through rate in only 6 cases, produces the same rate in 12 cases, and a rate less than 5 cents higher than the through rate in 5 cases. In the remaining cases the through rate is more than 5 cents less than the combination. From this it would appear that the St. Louis rates proper to Shreveport, on the commodities above referred to, are not to any considerable extent depressed by reason of low combinations on Mississippi River points. In this connection attention should, however, be directed to two exhibits submitted by the Shreveport Chamber of Commerce, which compare through rates on the commodities herein involved from points of production in defined territories with combinations of intermediate rates.

EXHIBIT 12.—*Through rates from St. Louis and certain points in defined territories to Shreveport, La., compared with combinations on lower Mississippi River crossings.*

Commodity.	St. Louis rate as shown in petition.	Tariff.	To Shreveport from—	Through tariff rate.	Combination of rates.	Rate.	Tariff reference.
Agricultural implements, C. L.	47	50	Fort Wayne, Ind..	61	Fort Wayne to New Orleans.	36	A
					New Orleans to Shreveport.	25	F
					Combination.....	61	
Do.....	47	50	South Bend, Ind..	61	South Bend to Vicksburg..	36	A
					Vicksburg to Shreveport...	25	E
					Combination.....	61	
Do.....	47	50	Massillon, Ohio...	63	Massillon to Baton Rouge..	38	A
					Baton Rouge to Shreveport.	25	F
					Combination.....	63	
Do.....	47	50	Buffalo, N. Y.....	63	Buffalo to Vidalia.....	38	A
					Vidalia to Shreveport.....	25	F
					Combination.....	63	
Do.....	47	50	Owensboro, Ky...	52.7	Owensboro to Natchez.....	29	B
					Natchez to Shreveport.....	25	F
					Combination.....	54	
Hand implements, C. L.	57	61	Buffalo, N. Y.....	82.1	Buffalo to New Orleans....	43	A
					New Orleans to Shreveport.	40	F
					Combination.....	83	
Do.....	57	61	Columbus, Ohio...	77.9	Columbus to Vicksburg....	41	A
					Vicksburg to Shreveport...	40	E
					Combination.....	81	
Do.....	57	61	Pittsburgh, Pa....	82.1	Pittsburgh to Baton Rouge.	43	A
					Baton Rouge to Shreveport.	40	F
					Combination.....	83	
Ammunition, C. L.(loaded shells).	76	65	Kings Mill, Ohio..	86.4	Kings Mill to Natchez.....	44	A
					Natchez to Shreveport.....	40	F
					Combination.....	84	
Do.....	76	65	Cleveland, Ohio...	93.6	Cleveland to New Orleans..	49	A
					New Orleans to Shreveport.	40	F
					Combination.....	89	
Axes, C. L....	58	58	Pittsburgh, Pa....	79.1	Pittsburgh to Vicksburg....	53	A
					Vicksburg to Shreveport...	25	E
					Combination.....	78	
Do.....	58	58	Detroit, Mich.....	74.9	Detroit to Natchez.....	53	A
					Natchez to Shreveport.....	25	F
					Combination.....	78	
Fruit jars, C. L.	40	40	Pittsburgh, Pa....	60.1	Pittsburgh to New Orleans.	37	A
					New Orleans to Shreveport.	22	F
					Combination.....	59	
Do.....	40	40	Washington, Pa...	60.1	Washington to New Orleans.	37	A
					New Orleans to Shreveport.	22	F
					Combination.....	59	
Glassware, n. o. s., C. L.	47	52	Pittsburgh, Pa....	75.7	Pittsburgh to New Orleans.	54	A
					New Orleans to Shreveport.	30	F
					Combination.....	84	

EXHIBIT 12.—Through rates from St. Louis and certain points in defined territories to Shreveport, La., etc.—Continued.

Commodity.	St. Louis rate as shown in petition.	Tariff.	To Shreveport from—	Through tariff rate.	Combination of rates.	Rate.	Tariff reference.
Iron, bar, band, rod, C. L.	25	30	Pittsburgh, Pa....	48.7	Pittsburgh to New Orleans.	30.7	A F
					New Orleans to Shreveport.	18	
					Combination.....	48.7	
Do.....	25	30	Youngstown, Ohio.	48.7	Youngstown to Vicksburg.	30.7	A E
					Vicksburg to Shreveport...	18	
					Combination.....	48.7	
Iron, columns, girders, etc., C. L.	30	30do.....	50.1	Youngstown to New Orleans.	30.7	A F
					New Orleans to Shreveport.	22	
					Combination.....	52.7	
Do.....	30	30	Pittsburgh, Pa....	50.1	Pittsburgh to Natchez.....	30.7	A F
					Natchez to Shreveport.....	22	
					Combination.....	52.7	
Iron pipe, C. L.	27	35do.....	48.7	Pittsburgh to Vicksburg....	30.7	A E
					Vicksburg to Shreveport...	18	
					Combination.....	48.7	
Do.....	27	35	Youngstown, Ohio.	48.7	Youngstown to Vicksburg..	30.7	A F
					Vicksburg to Shreveport...	18	
					Combination.....	48.7	
Iron roofing, C. L.	30	33	Wheeling, W. Va..	48.1	Wheeling to New Orleans..	30.7	A F
					New Orleans to Shreveport.	22	
					Combination.....	52.7	
Do.....	30	33	Portsmouth, Ohio.	48.6	Portsmouth to Vicksburg..	24.7	A B
					Vicksburg to Shreveport...	22	
					Combination.....	46.7	
Lawn mowers, C. L.	49	54	Richmond, Ind... Springfield, Ohio..	69	Richmond or Springfield to Vicksburg.	39	A E
					Vicksburg to Shreveport...	30	
					Combination.....	69	
Do.....	49	54	Columbus, Ohio...	71	Columbus to Vicksburg....	41	A E
					Vicksburg to Shreveport...	30	
					Combination.....	71	
Machinery, C. L.	48	52	Pittsburgh, Pa...	73.1	Pittsburgh to Vicksburg....	43	A E
					Vicksburg to Shreveport...	25	
					Combination.....	68	
Do.....	48	52	Cleveland, Ohio...	68.9	Cleveland to Vicksburg....	43	A E
					Vicksburg to Shreveport...	25	
					Combination.....	68	
Shot, C. L....	35	45	St. Louis, Mo.....	45	St. Louis to Vicksburg....	25	B E
					Vicksburg to Shreveport...	20	
					Combination.....	45	
Do.....	35	45	Batavia, Ill..... Chicago, Ill.....	52	Batavia or Chicago to Vicksburg.	31	C E
					Vicksburg to Shreveport...	20	
					Combination.....	51	
Do.....	35	45	Cleveland, Ohio...	61.9	Cleveland to Vicksburg....	33	A E
					Vicksburg to Shreveport...	20	
					Combination.....	53	

EXHIBIT 12.—Through rates from St. Louis and certain points in defined territories to Shreveport, La., etc.—Continued.

Commodity.	St. Louis rate as shown in petition.	Tariff.	To Shreveport from—	Through tariff rate.	Combination of rates.	Rate.	Tariff reference.
Shot, C. L....	35	45	Cincinnati, Ohio..	52.7	Cincinnati to Vicksburg.... Vicksburg to Shreveport...	27 20	B E
					Combination.....	47	
Indicator beams (scales), C. L.	60	65	St. Louis, Mo.....	65	St. Louis to Vicksburg..... Vicksburg to Shreveport...	40 25	B E
					Combination.....	65	
Do.....	60	65	Buffalo, N. Y.....	85.1	Buffalo to Vicksburg..... Vicksburg to Shreveport...	40 25	A E
					Combination.....	74	
Do.....	60	65	Monroe, Mich.....	81.9	Monroe to Vicksburg..... Vicksburg to Shreveport...	49 25	A E
					Combination.....	74	
Soap, C. L....	37	37	Ivorydale, Ohio...	44½	Ivorydale to New Orleans.. New Orleans to Shreveport.	27 17	B G
					Combination.....	44	
Do.....	37	37	Dayton, Ohio.....	47	Dayton to New Orleans.... New Orleans to Shreveport.	27 17	A G
					Combination.....	44	
Starch, C. L..	39	45	Cedar Rapids, Iowa	52	Cedar Rapids to Vicksburg.. Vicksburg to Shreveport...	37 22	C E
					Combination.....	59	
Do.....	39	45	Columbus, Ohio...	57.8	Columbus to Vicksburg.... Vicksburg to Shreveport...	35 22	A E
					Combination.....	57	
Stoves and hollow ware, C. L.	49	50	Detroit, Mich.....	66.9	Detroit to Vicksburg..... Vicksburg to Shreveport...	43 22	A E
					Combination.....	65	
Do.....	49	50	Columbus, Ohio...	66.9	Columbus to Vicksburg.... Vicksburg to Shreveport...	41 22	A E
					Combination.....	63	
Do.....	49	50	Chattanooga, Tenn.	50	Chattanooga to Vicksburg.. Vicksburg to Shreveport...	29 22	D E
					Combination.....	51	
Hollow ware..	49	50	South Pittsburg, Tenn.	69	South Pittsburg to New Orleans. New Orleans to Shreveport.	29 23	D F
					Combination.....	51	

Tariff reference: A, Eugene Morris's I. C. C. 471; B, M. P. Washburn's I. C. C. 119; C, C. E. Fulton's I. C. C. A-108; D, E. H. Hinton's I. C. C. A-22; E, V., S. & P. I. C. C. 2455; F, N. O. & N. E. I. C. C. 2677; G, L., R. & N. I. C. C. A-103.

EXHIBIT 14.—Through rates from St. Louis and certain points in defined territories to Shreveport, La., compared with combinations on lower Mississippi River crossings.

, 28.6; rate, 65.
 , 8; rate, 33.
 , 20.1; rate, 47.
 , 18.1; rate, 31.
 , 7; rate, 60.
 , 21.1; rate, 60.
 , 14.9; rate, 60.
 , 23.1; rate, 40.
 , 23.7; rate, 32.

²⁶ St. Louis differential, 23.8; rate, 59.
²⁷ St. Louis differential, 16.9; rate, 52.
²⁸ St. Louis differential, 10.8; rate, 45.
²⁹ St. Louis differential, 7.7; rate, 37.
³⁰ St. Louis differential, 20.1; rate, 35.
³¹ St. Louis differential, 20.1; rate, 33.
³² St. Louis differential, 16.9; rate, 35.
³³ St. Louis differential, 20.1; rate, 33.

EXHIBIT 14.—Through rates from St. Louis and certain points in defined territories to Shreveport, La., etc.—Continued.

Hinges, hangers.....	Pittsburgh.....	58	Pittsburgh.....	Vicksburg.....	31	.....	B
Roofing and sheet.....	do.....	48.1	Vicksburg.....	Shreveport.....	22	53	D
Tank material.....	do.....	50.1	Pittsburgh.....	Vicksburg.....	30.7	.....	B
Machinery.....	St. Louis.....	58	Vicksburg.....	Shreveport.....	22	52.7	D
Condensed milk.....	Highland, Ill.....	40	Pittsburgh.....	Vicksburg.....	30.7	.....	B
Do.....	Hudson, Mich.....	49.9	Vicksburg.....	Shreveport.....	22	52.7	D
Do.....	Cairo, Ill.....	33	St. Louis.....	Vicksburg.....	35	.....	A
Linseed oil.....	Pittsburgh.....	61.1	Vicksburg.....	Monroe.....	17	68	D
White lead.....	Cairo.....	38	Highland.....	Vicksburg.....	33	.....	C
Do.....	Nashville.....	40	Vicksburg.....	Shreveport.....	10	43	D
Do.....	Cincinnati.....	45.7	Hudson.....	Vicksburg.....	37	.....	B
Binders' board.....	Cairo.....	45	Vicksburg.....	Shreveport.....	10	47	D
Strawboard, pulp-board.....	St. Louis.....	45	Cairo.....	Vicksburg.....	34	.....	A
Roofing paper.....	Cincinnati.....	42.7	Vicksburg.....	Shreveport.....	10	34	D
Wrapping paper.....	Cairo.....	45	Pittsburgh.....	Vicksburg.....	39	.....	B
Pipe.....	Pittsburgh.....	48.7	Vicksburg.....	Shreveport.....	22	61	D
Soda.....	Cairo.....	37	Cairo.....	Vicksburg.....	17	.....	A
Stoves.....	Nashville.....	53	Vicksburg.....	Shreveport.....	22	36	D
Do.....	Memphis.....	43	Nashville.....	Vicksburg.....	17	.....	A
Tin cans.....	Pittsburgh.....	79.2	Vicksburg.....	Shreveport.....	22	39	D
Tin plate.....	do.....	60.1	Cincinnati.....	Vicksburg.....	24	.....	A
Axes.....	do.....	79.1	Vicksburg.....	Shreveport.....	22	46	D
Woodenware.....	St. Louis.....	60	Cairo.....	Vicksburg.....	23	.....	A
Do.....	Chicago.....	70	Vicksburg.....	Shreveport.....	22	45	D
Wheelbarrows.....	St. Louis.....	68	St. Louis.....	Vicksburg.....	25	.....	A
			Vicksburg.....	Shreveport.....	22	47	D
			New Orleans.....	Shreveport.....	16	38	E
			Cairo.....	Vicksburg.....	23	.....	A
			Vicksburg.....	Shreveport.....	20	43	D
			Pittsburgh.....	Vicksburg.....	30.7	.....	B
			Vicksburg.....	Shreveport.....	18	48.7	D
			Cairo.....	Vicksburg.....	15	.....	A
			Vicksburg.....	Shreveport.....	20	35	D
			Nashville.....	Vicksburg.....	29	.....	A
			Vicksburg.....	Shreveport.....	22	51	D
			Memphis.....	Vicksburg.....	17	.....	A
			Vicksburg.....	Shreveport.....	25	42	D
			Pittsburgh.....	New Orleans.....	49	.....	E
			New Orleans.....	Shreveport.....	27	76	B
			Pittsburgh.....	Vicksburg.....	32	.....	B
			Vicksburg.....	Shreveport.....	22	54	D
			Pittsburgh.....	Vicksburg.....	53	.....	B
			Vicksburg.....	Shreveport.....	25	78	D
			St. Louis.....	Vicksburg.....	35	.....	A
			Vicksburg.....	Shreveport.....	30	65	D
			Chicago.....	Vicksburg.....	41	.....	C
			Vicksburg.....	Shreveport.....	30	71	D
			St. Louis.....	Vicksburg.....	53	.....	D
			Vicksburg.....	Shreveport.....	25	54	D

¹ St. Louis differential, 20.1; rate, 40.

² St. Louis differential, 20.1; rate, 30.

³ St. Louis differential, 7; rate, 33.

⁴ St. Louis differential, 16.8; rate, 33.

⁵ St. Louis differential, 21.1; rate, 40.

⁶ St. Louis differential, 7.7; rate, 38.

⁷ St. Louis rate, 35; differential, 7.5.

⁸ St. Louis differential, 20.1; rate, 35.

⁹ St. Louis differential, 7; rate, 50.

¹⁰ St. Louis differential, 24.2; rate, 55.

¹¹ St. Louis differential, 21.1; rate, 55.

¹² St. Louis differential, 10; rate, 60.

Tariff reference: A, Mississippi river points tariff No. 7, M. P. Washburn's I. C. C. 119; B, Freight tariff 14-H, Eugene Morris's I. C. C. No. 471; C, Joint through freight tariff No. 108-E, C. E. Fulton's I. C. C. No. A-108; D, V., S. & P. local freight tariff 197-B, I. C. C. No. 2455; E, N. O. & N. E. local tariff 268-C, O. O. No. 2677; F, L., R. & N. freight tariff 1204, I. C. C. No. A-103.

Exhibit 12 gives a list of 18 of the 87 commodities named and shows that in nearly every instance the through rates from the points of production of the articles correspond very closely with the combination on Vicksburg or New Orleans. For example, the rate on agricultural implements from St. Louis to Shreveport is 50 cents

per 100 pounds. These articles are manufactured at Fort Wayne, Ind., South Bend, Ind., Massillon, Ohio, Buffalo, N. Y., Owensboro, Ky., and other points. The through rate from Fort Wayne and South Bend to Shreveport is 61 cents. The through rate from Fort Wayne is exactly equal to the combination on New Orleans. The through rate from South Bend is equal to the combination on Vicksburg. The through rate from Massillon of 63 cents is equal to the combination on Baton Rouge. The through rate from Buffalo of 63 cents is equal to the combination on Vidalia. The through rate from Owensboro is 52.7 cents, while the combination on Natchez is 54 cents. On agricultural implements (hand) the rate from St. Louis is 61 cents and the differential of Pittsburgh and Buffalo over St. Louis is 21.1 cents. These are produced at Buffalo, N. Y., Columbus, Ohio, Pittsburgh, Pa., and at other points. The through rate from Buffalo to Shreveport is 82.1 cents, 0.9 cent lower than the combination on New Orleans. The through rate from Columbus is 77.9 cents, 3.1 cents less than the combination on Vicksburg, while the Pittsburgh rate is 82.1 cents, 0.9 cent less than the combination on Baton Rouge.

Exhibit 14 shows 46 of the 87 commodities above named, one or more points of production of these articles, and the rates from these points of production to one of the lower Mississippi River crossings and the rates from this crossing to Shreveport. In 27 cases the through rate is higher than the combination, in 14 cases lower than the combination, and in 16 cases is equal to the combination on one or more of the lower Mississippi River crossings. In most of these instances in which the through rate is higher than the combination on the lower Mississippi River crossings this situation results from the construction of such through rates by combination on St. Louis using established differentials up to that point and adding thereto the published through rates from St. Louis to Shreveport.

In *Through Rates to Points in Louisiana and Texas*, 38 I. C. C., 153, we held that the through rates from all defined territory to all Louisiana and Texas points must be corrected so as not to exceed the combinations on these lower Mississippi River crossings. This doubtless will have the effect of reducing some of the through rates to Shreveport as well as to other Louisiana and Texas points, which are now higher than the combinations of intermediates, although the extent of the reductions is dependent upon the extent to which carriers will be able to effectuate increases in the intermediate rates.

From what has been said it is apparent that as to the commodities specified the through rates from producing points in defined territories other than St. Louis are compelled by combinations of intermediates on lower Mississippi River points in more instances than

are the rates from St. Louis proper. It may, however, be argued that in order to effect through rates from these producing points which shall not exceed the combinations of low intermediate rates it has been necessary to reduce the base rates from St. Louis to Shreveport. This would be true if through commodity rates from producing points were in all instances made by adding to the St. Louis rate the corresponding class differential, but this is not the case. An examination of the tariffs would appear to show that, wherever carriers have reduced through rates from interior producing points to meet combinations of low intermediate rates, the reduction in through rates has been effected not by a reduction in the St. Louis base rate but by publishing through rates not related to the St. Louis rates, by publishing separate commodity differentials lower than the class differentials, or by publishing proportional rates from St. Louis and other upper Mississippi River crossings limited to traffic from the particular producing points involved. However, even if the St. Louis rates had been reduced to effect through rates which would meet the combinations of low intermediate rates, carriers could not advance the convenience of using St. Louis rates as basing rates to justify an unreasonable spread between the rates to Shreveport and to northeast Texas points.

It is asserted in the complaint that the rates on the 87 commodities from St. Louis to Texarkana are unduly preferential of that point, and have the effect of producing undue prejudice against Dallas and Fort Worth. Little testimony was devoted to this branch of the complaint. An exhibit filed on behalf of Paris shows the distance to which Paris can distribute traffic on equal rates in competition with Texarkana. It is shown in defendants' behalf that rates the same or higher than those applied on traffic to Shreveport apply also as to points 100 miles or more north of Shreveport, including Texarkana. It is shown that the carriers have been authorized, after investigation, by this Commission to apply on certain of these commodities higher rates to the intermediate point, Texarkana, than to Shreveport. The rates on these commodities which these carriers now apply to Texarkana under the authority given them in the *Texarkana Case* are only in a few instances higher than the rates now applicable to Shreveport. While the report in the *Texarkana Case* permitted the carriers to continue rates on certain commodities from St. Louis to Texarkana not to exceed 6 cents per 100 pounds higher than the rates contemporaneously effective on like traffic to Shreveport in those instances in which the rates to Shreveport were made by combination over one of the lower Mississippi River crossings, it is asserted by the carriers that in readjusting the rates to Texarkana they were so limited by observing the Houston rates as

maxima or by reason of other considerations that they have established from St. Louis to Texarkana in nearly every instance the rates which apply to Shreveport.

It is contended by the defendants that the Commission's order in the *Texarkana Case* extended the influence of the Mississippi River competition to Texarkana and that the commodity rates now applied at that point as the result of the decision in that case are lower than they reasonably might be. The requirement placed upon these carriers by the Commission that the rates to Texarkana, 72 miles north of Shreveport and intermediate thereto via direct lines, should not exceed the rates to Shreveport by more than 6 cents per 100 pounds, was made with regard to what might be a reasonable and proper relation between the rates to these points under the circumstances existing. The commodity rates thus established at Texarkana may be less or more than reasonable, considered from the standpoint of distance hauled or service rendered. As to this the report in the *Texarkana Case* expressed no opinion whatever. In that case we were prescribing, under the fourth section of the act, the extent to which the carriers might be relieved from the requirements of the act. Besides, in that case the Commission said:

As to commodity rates which make via the direct lines to Texarkana and Shreveport, we see no reason why the rates to the former point should exceed those contemporaneously maintained to the latter.

Considering the St. Louis group rather than St. Louis itself, it will be seen that Texarkana is in practically the same relative position as is Shreveport with respect to this group and the immense territory from which Texas rates base on this group. It is 189 miles from Shreveport to Dallas and 221 miles to Fort Worth via the Texas & Pacific Railway, and it is 213 miles from Texarkana to Dallas and 246 miles to Fort Worth by the same railroad. Both Texarkana and Shreveport are practically intermediate to these Texas cities, and are actually intermediate on much traffic from the defined territories. Their geographical positions entitle them to lower rates than the Texas cities from a very large part of defined territories, particularly the territory lying east of the Mississippi River. Dallas and Fort Worth, however, may fairly claim that the rates to these Texas cities should bear a fair and reasonable relation to the rates to Texarkana and Shreveport.

It is urged by the complainants that whatever influences may have operated to depress the commodity rates to Shreveport have similarly affected the class rates to that point, and that the difference in conditions between Dallas and Fort Worth, on the one hand, and Shreveport, on the other, is fairly measured by the difference between the class rates. With this contention we can not fully agree. In the

Texarkana Case we held that the class rates from St. Louis and defined territories to Shreveport had not been depressed by reason of its position on the Red River or its contiguity to the Mississippi River, but we authorized the maintenance of higher rates on certain commodities to Texarkana than to Shreveport. This was done in recognition of the fact that such commodity rates to Shreveport had been influenced to some extent by competitive conditions at that point. But we further found in that case that rates on other commodities had not been so influenced.

The commodity rates from Kansas City to both Texarkana and Shreveport appear to be in all instances the same as from St. Louis. The direct line and the rate-making line from Kansas City to both Texarkana and Shreveport is the Kansas City Southern Railway. The distance via this line to both destination points is practically the same as from St. Louis. The Kansas City Southern does not reach St. Louis. The shippers at Kansas City are in direct competition at Texarkana and Shreveport with shippers at St. Louis, and the interests of its shippers and the interests of the road have been such as to render expedient the maintenance of the same rates from Kansas City that its competitors maintain from St. Louis.

In support of complainants' charge that the present rates to these northeast Texas points are unjust and unreasonable in and of themselves, they assert that these points in northeast Texas being nearer to the markets of production should enjoy rates therefrom which are lower than should be applied to other points in the more southerly and westerly portions of the state, which involve a materially longer haul.

It is perfectly evident that any attempt on the part of this Commission to satisfy in any material manner the complaint before us involves the eventual breaking up of the Texas common-point group. A very large portion of the traffic to Texas comes from the northeast through St. Louis, Kansas City, and other gateways. Another material portion comes from the east through the gateways of Memphis, Vicksburg, and New Orleans. The great bulk of the Atlantic seaboard traffic comes water and rail via Galveston. Certain iron articles, sugar, and potatoes come from Colorado common points. We realize fully, and these complainants admit, that if the northeast portion of the state is entitled to lower rates than the rest of common-point territory on business from St. Louis the eastern section has as good a claim for lower rates on business through Memphis, Vicksburg, and New Orleans, the southern portion of the state on business through Galveston, and the northwestern portion for lower rates than to the rest of the state on business from Colorado. But the issue upon which this complaint has been based, and the pro-

ceedings had thereon, are not broad enough to permit us, if we desired to do so, to undertake this division of common-point territory.

It is our duty, however, with all these things in mind, to examine the testimony furnished respecting the propriety of these rates, to give to it due consideration, and to make such finding as the circumstances appear to require, although we may be well aware that such action may lead to further readjustments, and possibly to other complaints.

In an examination of these rates to Dallas and Fort Worth for the purpose of determining whether or not they are reasonable in and of themselves we are reminded that in *Railroad Commission of Texas v. A., T. & S. F. Ry. Co.*, 20 I. C. C., 463, we had occasion to examine the whole schedule of class and commodity rates from defined territories to Texas common points which had been increased a short time prior to the complaint. In that case, while requiring some reductions in the class rates, we held that the increased commodity rates as a whole were not unreasonable, but qualified the finding by the statement that any particular rate or set of rates in these schedules was still open to attack upon any of the grounds ordinarily assigned in challenging the reasonableness of rates. It is claimed that if these commodity rates were reasonable at the time the testimony in that case was taken in 1910 there is no showing of changed transportation and traffic conditions that would now render such rates unreasonable. The report referred to deals with the entire list of commodity rates from defined territories to all Texas common points. The complaint in this case is directed against the rates from the same originating points to a limited section only of the Texas common-point territory. Where a rate group is so large as this, comprising an area of approximately 120,000 square miles, it may very well be that a rate which is entirely reasonable when applied to the average haul to points within the group is unreasonable when considered as applied to a haul to the nearer portion of the group to which the distance is materially less. The average haul from St. Louis to Texas common-point territory is variously estimated from 800 to 825 miles. The average haul to Dallas and Fort Worth is 696 miles. The average haul from St. Louis to all points in the northeast Texas group is probably about 650 miles.

The defendants urge that their revenues on traffic to Texas are now insufficient to pay operating expenses and to yield their stockholders anything above a very meager return upon the investment, and that any serious reductions in the rates to Dallas and Fort Worth must be followed by similar reductions to Oklahoma points, and will give rise to numerous complaints respecting rates to other Texas points.

The carriers defendant herein submitted upon the hearing a consolidated income statement for the fiscal years 1908 to 1915, inclusive, for the following roads:

40 I. C. C.

Atchison, Topeka & Santa Fe Railway system; St. Louis Southwestern Railway Company; Louisiana & Western Railroad Company; International & Great Northern Railway Company; Galveston, Harrisburg & San Antonio Railway Company; Houston & Texas Central Railroad Company; the Houston East & West Texas Railway Company; Houston & Shreveport Railroad Company; Texas & New Orleans Railroad Company; the St. Louis, Brownsville & Mexico Railway Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Fort Worth & Denver City Railway Company; Missouri, Oklahoma & Gulf Railway Company; New Orleans, Texas & Mexico Railroad; San Antonio & Aransas Pass Railway Company; Texas Midland Railroad; Missouri, Kansas & Texas lines; St. Louis & San Francisco Railroad lines; Kansas City Southern Railway Company; Rock Island lines; Texas & Pacific Railway Company; and St. Louis, Iron Mountain & Southern Railway Company,

and a like statement, intended to cover primarily Texas lines, for the—

Chicago, Rock Island & Gulf Railway; Missouri, Kansas & Texas Railway of Texas; St. Louis Southwestern Railway Company of Texas; Texarkana & Fort Smith Railway Company; St. Louis & San Francisco Railroad, Texas lines; Galveston, Harrisburg & San Antonio Railway Company; Houston & Texas Central Railroad Company; the Houston East & West Texas Railway Company; Houston & Shreveport Railroad Company; International & Great Northern Railway Company; the St. Louis, Brownsville & Mexico Railway Company; Fort Worth & Denver City Railway Company; San Antonio & Aransas Pass Railway Company; Texas Midland Railroad; and Gulf, Colorado & Santa Fe Railway Company.

The carriers' statements show deductions from operating income for "hire of equipment," "rentals," "profit and loss adjustment on prior years," and "other deductions." The resulting balance carriers designate as the "balance applicable to return on investment," and this sum they have capitalized at 7 per cent. The capitalization per mile of road operated so ascertained is compared with the cost of road and equipment as given by the carriers.

Carriers' first statement after making the deductions referred to shows for all of the roads listed a balance applicable to return on investment per mile of road operated of from \$1,511.72 in 1914 to \$1,977.68 in 1910, equivalent to 7 per cent on a value per mile of road operated of \$21,596 and \$28,252.57, respectively. The second statement, which is confined to Texas lines, shows a balance applicable to return on investment per mile of road operated ranging in amount from a deficit in 1914 to \$1,148.61 in 1911, the latter amount being equivalent to 7 per cent on a value per mile of road operated of \$14,555.57. For the year 1915 the first statement shows a balance applicable to return on investment per mile of road operated of \$1,567.25, equivalent to 7 per cent on a value per mile of road operated of \$22,389.29, while the second statement shows a balance applicable to return on investment per mile of road operated of \$552.65, equivalent to 7 per cent on a value per mile of road operated of \$7,895.

While some of the deductions from operating income which carriers have made should undoubtedly be allowed, others may not be legitimate. It does not appear from the exhibits filed just what was included in the different items. The deductions made for "rentals" in so far as they cover rent from or for lease of road should not have been made. That item represents the return on capital investment for part of the road operated on which a return is to be earned and not the cost of operation. The amounts deducted under the head of "rentals" for the fiscal year of 1915 are \$2,669,124.12 from an operating income of \$92,391,729.15 for the roads enumerated in carriers' first statement and \$1,594,297.14 from an operating income of \$13,141,953.84 for the Texas lines shown in the second statement. While it is entirely proper to deduct "profit and loss adjustments on prior years" from operating income before paying dividends, it is not proper to make such deduction when ascertaining the present earning power of the road. During the fiscal year 1915 this item amounted to \$2,146,225.08 for the roads enumerated in carriers' first statement and to \$58,827.92 for the Texas lines shown in the second statement. During the previous fiscal year this item amounted to \$4,959,785.51 for the Texas lines. Carriers do not specify what they included under "other deductions and additions." The first statement shows deductions of \$14,713,672.08 in 1915 and the second of \$2,099,226.06 under this head.

Items which may with greater propriety be deducted from operating income are "hire of freight cars," "rent of locomotives and other equipment," and "miscellaneous rents, not including rents from or for lease of road," it being understood that deductions for tax accruals have been made before arriving at operating income. But even as to the items specified above it should be stated that the amount charged may legitimately be deducted from operating income in ascertaining the balance applicable for return on investment only in so far as it represents a saving of operating expenses which would otherwise have been incurred. In so far as these items represent interest on capital invested in freight cars, locomotives, or other equipment they must be regarded as representing return on capital rather than operating expense. It must also be presumed that lines showing a large debit balance under "hire of equipment" are working under a fair and equitable arrangement with the parent line or other lines from which the equipment is secured. Taking it all in all, however, we feel that it would not be unfair in ascertaining a balance which may be said to reflect the earning power of the roads herein involved on the existing volume of traffic at present rates to deduct from the operating income the items referred to in this paragraph. This has been done in the table following.

Statement compiled from returns contained in the annual reports filed with the Interstate Commerce Commission by the roads named for the years ended June 30, 1913, 1914, and 1915.

Name of road.	Railway operating income.	Rent income. ¹	Rent deduction. ¹	Net balance.	Average mileage operated during the year.	"Net balance" per mile of line.	Capitalization of "net balance" at—		
							5 per cent.	6 per cent.	7 per cent.
Atchison, Topeka & Santa Fe Ry. Co.: 1913..... 1914..... 1915.....	\$30,192,639.78 28,594,126.32 30,930,100.09	\$1,242,554.91 1,517,339.09 1,074,185.75	\$651,100.37 615,451.84 882,648.96	\$30,784,094.32 29,496,013.57 31,121,636.88	8,218.27 8,345.79 8,492.15	\$3,745.81 3,534.24 3,664.75	\$74,916.20 70,684.80 73,295.00	\$62,430.17 58,904.00 61,079.17	\$53,511.57 50,489.14 52,353.57
St. Louis Southwestern Ry. Co.: 1913..... 1914..... 1915.....	3,366,580.48 2,646,267.26 1,944,707.62	495,621.79 500,359.66 641,503.96	369,341.26 386,205.02 419,572.79	3,492,861.01 2,760,421.90 2,166,638.79	905.80 924.30 943.30	3,856.11 2,986.50 2,296.87	77,122.20 59,730.00 45,937.40	64,268.50 49,775.00 38,281.17	55,087.29 42,664.29 32,812.43
Louisiana Western R. R. Co.: 1913..... 1914..... 1915.....	652,623.37 526,561.79 524,242.49	76,168.75 79,569.46 43,376.39	6,986.28 6,986.28 20,566.80	721,805.84 599,144.97 547,052.08	207.83 207.83 207.74	3,473.06 2,882.86 2,633.35	69,461.20 57,657.20 52,667.00	57,884.33 48,047.67 43,889.17	49,615.14 41,183.71 37,619.29
Texas & New Orleans R. R. Co.: 1913..... 1914..... 1915.....	357,051.46 172,519.65 175,296.36	9,646.99 11,824.61 406,326.34	202,732.32 166,724.48 591,717.56	163,966.13 17,619.78 * 10,094.86	458.03 458.03 469.15	357.98 38.47	7,159.60 769.40	5,966.33 641.17	5,114.00 549.57
Morgan's Louisiana & Texas R. R. & S. S. Co.: 1913..... 1914..... 1915.....	495,719.65 800,889.51 708,838.12	23,940.10 47,725.04 211,939.46	71,462.51 99,675.49 236,638.36	448,197.24 748,939.06 684,159.23	404.53 404.53 404.53	1,107.95 1,851.38 1,691.24	22,159.00 37,027.60 33,824.80	18,465.83 30,856.33 28,187.33	15,827.86 26,448.29 24,160.57
Missouri, Oklahoma & Gulf Ry. Co.: 1913..... 1914..... 1915.....	11,477.10 * 81,161.53 * 177,112.71	35,346.28 12,481.86 17,025.89	20,509.19 12,991.03 25,913.83	26,314.19 * 81,670.70 * 186,000.65	275.97 334.37 334.37	95.35	1,907.00	1,589.17	1,362.14
New Orleans, Texas & Mexico R. R. Co.: 1913..... 1914..... 1915.....	247,306.65 95,700.07 110,051.18	72,217.10 17,922.21 138,056.53	138,923.43 157,443.57 244,918.60	180,602.32 * 43,821.29 3,189.11	278.46 285.87 285.87	648.58 11.16	12,971.60 223.20	10,809.67 186.00	9,265.43 159.43
San Antonio & Aransas Pass Ry. Co.: 1913..... 1914..... 1915.....	1,193,902.96 502,877.54 16,207.10	1,312.63 1,285.40 16,241.50	200,005.70 40,759.01 5,971.51	995,209.89 463,403.93 26,477.09	726.56 726.56 726.56	1,369.76 637.81 36.44	27,295.20 12,756.20 728.80	23,829.33 10,630.17 607.33	19,568.00 9,111.57 520.57
Missouri, Kansas & Texas lines: 1913..... 1914..... 1915.....	8,194,317.56 7,191,570.72 8,584,004.26	535,106.65 118,104.60 611,501.25	554,610.20 531,447.72 1,314,561.30	8,174,813.01 6,778,227.60 7,881,544.21	3,677.47 3,824.82 3,865.07	2,222.94 1,772.17 2,039.17	44,453.80 35,443.40 40,783.40	37,049.00 29,536.17 33,986.17	31,766.29 25,316.71 29,131.00
St. Louis & San Francisco R. R. Co.: 1913..... 1914..... 1915.....	13,375,842.60 9,969,821.17 11,075,621.32	1,019,832.32 998,524.27 1,362,655.32	184,560.56 400,636.87 1,016,048.70	14,211,164.36 10,567,709.07 11,422,227.94	4,741.58 4,746.32 4,746.62	2,997.14 2,226.51 2,406.39	59,942.80 44,530.20 48,127.80	49,952.33 37,108.50 40,106.50	42,816.29 31,807.29 34,377.00

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Kansas City Southern Ry. Co.:											
1913.....	3,493,813.02	118,465.62	306,661.58	3,305,617.06	827.17	3,996.30	79,928.00	66,605.00	57,090.00		
1914.....	3,515,275.42	146,994.85	198,446.78	3,463,823.49	827.17	4,187.56	83,751.20	69,792.67	59,822.29		
1915.....	2,977,274.04	208,103.74	317,729.17	2,867,648.61	836.51	3,428.11	68,562.20	57,135.17	48,973.00		
Chicago, Rock Island & Pacific Ry. Co.:											
1913.....	14,611,278.80	561,793.34	2,326,504.27	12,846,567.87	7,572.46	1,696.49	33,929.80	28,274.83	24,235.57		
1914.....	13,129,732.65	456,622.16	2,356,721.56	11,229,633.25	7,729.77	1,452.78	29,055.60	24,213.00	20,754.00		
1915.....	13,452,255.19	831,159.93	3,145,709.43	11,137,705.69	7,854.56	1,417.99	28,359.80	23,633.17	20,257.00		
Texas & Pacific Ry. Co.:											
1913.....	2,572,146.54	106,719.01	237,660.21	2,441,205.34	1,884.65	1,295.31	25,906.20	21,588.50	18,504.43		
1914.....	3,594,801.38	136,159.39	475,309.73	3,255,651.04	1,884.65	1,727.45	34,549.00	28,790.83	24,677.86		
1915.....	3,225,651.86	193,918.97	684,328.00	2,735,242.83	1,901.12	1,438.75	28,775.00	23,979.17	20,553.57		
St. Louis, Iron Mountain & Southern Ry. Co.:											
1913.....	10,226,753.50	263,372.15	948,779.33	9,541,346.32	3,337.50	2,858.83	57,176.60	47,647.17	40,840.43		
1914.....	10,451,600.26	299,809.15	1,170,282.13	9,581,127.28	3,364.95	2,847.33	56,946.60	47,455.50	40,676.14		
1915.....	7,662,866.47	699,667.87	1,504,976.04	6,857,548.30	3,364.65	2,038.12	40,762.40	33,968.67	29,116.00		
TEXAS ROADS.:											
Chicago, Rock Island & Gulf Ry. Co. (part of Rock Island system):											
1913.....	1,111,539.26	175,204.17	46,098.43	1,240,645.00	476.75	2,602.30	52,046.00	43,371.67	37,175.71		
1914.....	588,498.23	175,237.62	59,492.14	704,243.71	476.75	1,477.18	29,543.60	24,619.67	21,102.57		
1915.....	591,238.16	330,898.90	216,512.95	705,624.11	476.75	1,480.07	29,601.40	24,667.83	21,143.86		
St. Louis Southwestern Ry. Co. of Texas (part of St. Louis Southwestern sys em):											
1913.....	233,235.96	346,427.50	53,824.69	525,838.77	703.32	747.65	14,953.00	12,460.83	10,680.71		
1914.....	290,049.77	307,316.05	62,786.87	45,520.59	810.50	.....	.....	.....	.....
1915.....	261,966.28	404,793.15	89,619.38	53,207.49	810.50	65.65	1,313.00	1,094.17	937.86		
Galveston, Harrisburg & San Antonio Ry. Co. (part of Sunset Central lines):											
1913.....	2,080,269.05	148,974.31	520,977.19	1,708,266.17	1,338.41	1,276.34	25,526.80	21,272.33	18,233.43		
1914.....	1,496,485.11	150,419.09	219,726.57	1,427,177.63	1,338.41	1,066.32	21,326.40	17,772.00	15,233.14		
1915.....	1,453,907.41	607,287.86	783,360.22	1,277,835.05	1,346.51	949.00	18,980.00	15,816.67	13,557.14		
Houston & Texas Central R. R. Co. (part of Sunset Central lines):											
1913.....	1,102,820.73	49,475.05	537,578.78	614,717.00	789.01	779.10	15,582.00	12,985.00	11,130.00		
1914.....	667,747.93	50,714.31	464,924.84	253,537.40	812.91	311.89	6,237.80	5,198.17	4,455.57		
1915.....	1,053,272.25	350,566.82	487,442.22	916,396.85	868.74	1,054.86	21,097.20	17,581.00	15,069.43		
Houston, East & West Texas Ry. Co. (part of Sunset Central lines):											
1913.....	300,956.19	11,212.92	133,728.29	178,440.82	190.94	934.54	18,690.00	15,575.67	13,350.57		
1914.....	324,666.83	11,513.98	130,853.57	205,327.24	190.94	1,075.35	21,507.00	17,922.50	15,362.14		
1915.....	249,796.32	55,595.77	112,332.62	193,059.47	190.94	1,011.10	20,222.00	16,851.67	14,444.29		

Represents hire of freight cars, rent of locomotives, rent of other equipment, joint facility rents, and miscellaneous rents.

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This statement does not contain data with regard to the Missouri, Kansas & Texas Railway of Texas, the St. Louis & San Francisco Railroad—Texas lines, or the Texas & Fort Smith Railway, which was included in carriers' second statement, referred to in the text.

Statement compiled from returns contained in the annual reports filed with the Interstate Commerce Commission by the roads named for the years nde June 30, 1913, 1914, and 1915—Continued.

Name of road.	Railway operating income.	Rent income.	Rent deduction.	Net balance.	Average mileage operated during the year.	"Net balance" per mile of line.	Capitalization of "net balance" at—		
							5 per cent.	6 per cent.	7 per cent.
TEXAS ROADS—continued.									
Houston & Shreveport R. R. Co. (part of Sunset Central lines):									
1913.....	\$170,862.38	\$1,861.43	\$43,382.37	\$129,341.44	39.78	\$3,251.42	\$65,028.40	\$54,190.33	\$46,448.86
1914.....	187,366.61	1,466.16	40,972.91	147,859.86	39.78	3,716.94	74,338.80	61,949.00	53,099.14
1915.....	90,448.05	1,467.56	19,819.93	72,065.68	40.72	1,770.52	35,410.40	29,508.67	25,293.14
International & Great Northern Ry. Co.:									
1913.....	2,372,212.81	71,022.31	856,702.18	1,586,532.94	1,159.50	1,368.29	27,365.80	22,804.83	19,547.00
1914.....	1,561,098.93	65,223.37	757,235.23	869,087.07	1,159.50	749.54	14,990.80	12,492.33	10,707.71
1915.....	806,499.54	113,840.46	659,585.91	260,754.09	1,159.50	224.88	4,497.60	3,748.00	3,212.57
St. Louis, Brownsville & Mexico Ry. Co. (part of Frisco lines):									
1913.....	519,585.03	710.31	294,899.25	225,396.09	517.74	435.35	8,707.00	7,255.83	6,219.29
1914.....	463,987.65	823.77	318,450.19	146,361.23	517.74	282.69	5,653.80	4,711.50	4,038.43
1915.....	525,267.20	46,531.39	179,178.65	392,619.94	548.18	716.22	14,324.40	11,937.00	10,231.71
Fort Worth & Denver City Ry. Co. (part of Colorado & Southern lines):									
1913.....	1,450,587.91	3,509.14	73,935.66	1,380,161.39	454.14	3,039.07	60,781.40	50,651.17	43,415.29
1914.....	1,016,147.34	3,994.09	79,385.93	940,755.50	454.14	2,071.51	41,430.20	34,525.17	29,593.00
1915.....	1,326,558.73	35,238.41	259,493.06	1,102,304.08	454.14	2,427.23	48,544.60	40,453.83	34,674.71
San Antonio & Aransas Pass Ry. Co.:									
1913.....	1,193,902.96	1,312.63	200,005.70	995,209.89	728.56	1,369.76	27,395.20	22,829.33	19,568.00
1914.....	502,877.54	1,285.40	40,759.01	463,403.93	728.56	637.81	12,756.20	10,630.17	9,111.57
1915.....	16,207.10	16,241.50	5,971.51	26,477.09	728.56	36.44	728.80	607.33	520.57
Texas Midland R. R.:									
1913.....	143,739.53	.....	70,046.21	73,693.32	125.15	588.84	11,776.80	9,814.00	8,412.00
1914.....	100,090.87	.....	80,741.86	19,349.01	125.15	154.61	3,092.20	2,576.83	2,208.71
1915.....	72,264.18	975.65	49,702.87	23,536.96	125.15	188.07	3,761.40	3,134.50	2,686.71
Gulf, Colorado & Santa Fe Ry. Co. (part of Santa Fe system):									
1913.....	3,035,909.42	273,822.57	745,419.47	2,564,312.52	1,595.67	1,607.04	32,140.80	26,784.00	22,957.71
1914.....	2,339,194.09	289,998.35	816,547.56	1,812,644.88	1,595.81	1,135.88	22,717.60	18,931.33	16,228.86
1915.....	4,184,521.01	264,761.83	1,162,352.55	3,286,930.29	1,937.13	1,696.80	33,986.00	28,280.00	24,240.00

The testimony of the complainants with respect to the reasonableness of the rates to Dallas and Fort Worth was largely confined to a contrast between rates and ton-mile earnings from St. Louis to Dallas and Fort Worth as compared with rates and ton-mile earnings to Shreveport. No evidence was presented respecting the unreasonableness of rates from points in defined territories other than St. Louis and Kansas City, although that was one of the allegations of the complaint. It was apparently the idea of the complainant that if it were shown that one of the components upon which through rates from defined territories to Dallas and Fort Worth were constructed was unreasonable it necessarily followed that the through rates constructed by the use of this unreasonable component were also unreasonable. Where through rates are made by combination of local rates and one of these local rates is found to be unreasonable, it is inferable that through rates that are made by the use of this unreasonable component are unreasonable. In this case the through rates to Texas points from defined territories are not generally so made. They are constructed by the use of differentials from the various groups as shown below:

Differentials from defined territories applicable on Texas traffic to be added to or deducted from the rate in effect from St. Louis.

From—	Basis.	1	2	3	4	5	A	B	C	D	E
Memphis.....	Deduct..	10.0	10.0	8.0	7.0	5.0	7.0	5.0	5.0	5.0	5.0
Nashville.....	Add.....	6.0	5.0	4.0	3.0	2.0	3.0	2.0	2.0	2.0	1.0
Louisville (south of Ohio River).	Add.....	11.0	9.0	6.0	5.0	3.0	4.0	3.0	3.0	3.0	2.0
Louisville (on and north of Ohio River).	Add....	12.8	10.6	7.2	5.8	3.7	4.7	3.5	3.5	3.5	2.5
Macon.....	Add.....	11.0	9.0	6.0	5.0	3.0	4.0	3.0	3.0	3.0	2.0
Carolina.....	Add.....	29.0	22.0	17.0	13.0	10.0	11.0	10.0	9.0	9.0	9.0
Omaha-Davenport.....	Add.....	15.0	12.0	9.0	7.0	4.0	5.0	4.0	4.0	4.0	3.0
Chicago.....	Add.....	20.0	16.0	12.0	10.0	7.0	9.0	8.0	7.0	6.0	5.0
Cincinnati (south of Ohio River).	Add.....	20.0	16.0	12.0	10.0	7.0	9.0	8.0	7.0	6.0	5.0
Cincinnati (on and north of Ohio River).	Add.....	21.9	17.6	13.2	10.8	7.7	9.7	8.5	7.5	6.5	5.5
Milwaukee.....	Add.....	20.0	16.0	12.0	10.0	7.0	9.0	8.0	7.0	6.0	5.0
Fox River.....	Add....	40.0	31.0	24.0	20.0	15.0	16.5	14.0	12.0	11.0	10.0
Dayton-South Bend.....	Add.....	34.2	28.8	21.4	17.0	11.8	11.8	10.8	10.8	10.8	10.8
Middlesborough.....	Add.....	40.0	35.0	27.0	19.0	16.0	16.0	14.0	12.0	12.0	11.0
Detroit-Cleveland.....	Add.....	42.5	37.2	28.6	20.2	16.9	16.9	14.8	12.8	12.8	11.8
Pittsburgh.....	Add.....	52.7	47.4	33.8	24.2	20.1	21.1	16.9	16.9	16.9	15.0
Raleigh.....	Add.....	46.0	35.0	27.0	21.0	16.0	18.0	16.0	15.0	15.0	16.0

The differentials under St. Louis of lower Mississippi River crossings, viz, Vicksburg, Natchez, Baton Rouge, and New Orleans, are as follows:

Class.....	1	2	3	4	5	A	B	C	D	E
Differential..	10	10	10	9	6	7	6	6	6	6

The through rates are constructed by adding or subtracting the differentials shown above to or from the rates from St. Louis. These differentials are in many instances very much less than the local rates

to St. Louis or to any points in the St. Louis group. Should it be shown that the rates from St. Louis to any of these Texas points are unreasonable, it could not be concluded from that circumstance that the through rates from all other points in defined territories are unreasonable.

We will therefore confine our attention to the local rates from St. Louis to northeast Texas. The table shown at pages 622 and 623 discloses the rate relationship between northeast Texas points and Shreveport on the commodities herein involved. The average of the 87 principal commodity rates complained of shows that the commodity rates from St. Louis to northeast Texas are approximately 50 per cent in excess of the rates on the same commodities to Shreveport. Carriers have not justified so great a difference. Shreveport's proximity to the Mississippi River together with the difference in distance can not be regarded as a justification for the existing spread between Shreveport and northeast Texas in rates from St. Louis and Kansas City for an average difference in distance of approximately 88 miles.

Group rates can be considered just and reasonable only in so far as they do not effect unjust discrimination. Carriers have found it necessary to depart from the Texas common-point adjustment on traffic from Kansas City to the Dallas and Fort Worth group. We believe the present record shows that a like exception should be made in rates from St. Louis and Kansas City to northeast Texas. The rates to northeast Texas are admittedly such as would be considered reasonable for an average haul of from 800 to 825 miles, that being the average haul to Texas common-point territory. Rates so constructed can not be considered reasonable in so far as they are unjustly discriminatory. As to traffic from St. Louis and Kansas City to points in northeast Texas, those points are at a disadvantage as compared with Shreveport, a competing locality, by reason of the shorter distance to Shreveport, and the competitive conditions at that point, but that natural disadvantage ought not to be unduly increased by an artificial rate adjustment.

The principal cities affected by this complaint are Dallas and Fort Worth. They are approximately 696 miles from St. Louis and 510 miles from Kansas City, via the short lines. The average distance from St. Louis to northeast Texas is probably not far from 650 miles and the average from Kansas City about 550 miles. Upon a consideration of all the facts of record, we find that it is reasonable to require the carriers to recognize the position of the points in northeast Texas and to establish from St. Louis to all those points rates which, with the exceptions hereinafter stated, shall be as much as 5 cents per 100 pounds less than the rates at present in effect. Points in northeast Texas east of the so-called Dallas and Fort

Worth group are practically the same distance from Kansas City and St. Louis and take the same rates from both points. We are of the opinion that the rates from Kansas City to such points are unreasonable to the extent that they exceed the rates we have herein found to be reasonable from St. Louis. Points in the western portion of northeast Texas and included in the Dallas-Fort Worth group are approximately 100 miles nearer to Kansas City than to St. Louis and take rates from Kansas City from 5 to 8 cents less per 100 pounds than from St. Louis. In our opinion these rates from Kansas City are unreasonable to the extent that they are not as much as 5 cents per 100 pounds less than we have found reasonable from St. Louis. In reaching this determination we are mindful of the fact that the rates on the commodities involved vary in amount and that a more complete record might have justified as to some of them an even greater reduction. However, in view of the fact that northeast Texas has for so long a time been grouped with the rest of Texas common-point territory it is felt that the present record does not permit us to go beyond the determination reached.

There are certain of these commodities upon which the current rates from St. Louis and Kansas City to Dallas and Fort Worth do not appear to be unreasonable, and no change will be required in these rates. These commodities are as follows:

	Present rate from St. Louis.
Furniture.....	85
Binder twine.....	62
Bagging and ties	37
Bags and bagging, burlap, and jute.....	60
Clayed and cotton bags.....	60
Oil barrels.....	50
Canned goods	51
Cement plaster board	40
Glucose.....	49
Minced meat, condensed.....	49
Paving pitch and tar.....	40
Sewer pipe and draintile.....	39
Soda ash	34

The rates on these commodities are, in our judgment, not unreasonable when considered in connection with the haul from St. Louis and Kansas City to these northeast Texas points.

This finding will not necessarily affect the rates from other points in defined territories except from points from which the local rates to Kansas City or St. Louis added to the rates herein prescribed from those cities to Texas points are lower than the present through rates from points of origin to Texas.

It is represented that there may be certain other carriers operating routes from St. Louis and Kansas City to the territory described in

northeast Texas whose lines in Texas pass outside the boundaries of this group. In such cases these carriers may desire to continue to compete for the traffic into northeast Texas at the reduced rates herein found reasonable while continuing higher rates at intermediate points. In that event application should be filed with the Commission for authority to deviate from the rule of the fourth section of the act to regulate commerce to the extent that may be necessary in order to establish these rates. The order herein will be confined to rates to Dallas, Fort Worth, Paris, and Denison, which are the only points in northeast Texas referred to in the complaint or in intervening petitions filed prior to the hearing. These points are also included within the Dallas-Fort Worth group on traffic from Kansas City. Carriers should, however, observe the rates established as maxima at all intermediate points via reasonably direct lines, and are expected to revise their rates to northeast Texas in accordance with our findings.

FABRICATING IN TRANSIT.

While some reference was made in the complaint to classification rules and exceptions and to tariffs containing such rules, there was nothing in the complaint which indicated any desire on the part of the complainants to object to any particular rule or practice contained in these tariffs. At the hearing, however, an exhibit was introduced by complainants' witness for the purpose of showing discrimination against Dallas in the application of item 400-H, supplement No. 46 to southwestern lines' classification and rules, formerly No. 1-F, Leland's I. C. C. No. 1026, and individual issues of carriers referred to in said item. This item refers to the reworking in transit of articles of iron and steel. This item permits the movement of iron, structural iron, and iron used for various purposes, such as the manufacture of tanks, silos, smokestacks, boiler flues, and various other things of a similar character, from points of origin of the iron to other points intermediate to final destination, and there permits of reworking or fabrication and a reshipment of the reworked or fabricated material on to final destination at the through rate applicable to the fabricated material from point of origin to final destination, plus a charge of 1½ cents per 100 pounds. This fabricating-in-transit provision is permitted at Shreveport and at Oklahoma City but not at Dallas and Fort Worth. The testimony of the carriers indicates that they have no good ground for denying this fabricating-in-transit provision at Dallas and Fort Worth or other points in Texas where this service may be desired.

The following colloquy between Mr. West, a witness for the carriers, and the Commission's examiner appears to show the attitude of the carriers:

Mr. WEST. I never had a suggestion from any fabricator in Texas that this fabricating-in-transit rule should be applied to all-rail movement.

EXAMINER. If you had had it would you have granted it?

Mr. WEST. I don't see how we could have avoided it.

Owing to the insufficiency of the complaint respecting this rule we do not feel warranted in making any order respecting this matter but shall leave it to the carriers to correct the rule in such manner as to apply to such other points in Texas as the circumstances may appear to require.

An appropriate order will be entered.

HARLAN, *Commissioner*, dissenting:

In *Dallas Freight Bureau v. M., K. & T. Ry. Co.*, 12 I. C. C., 427, 431, and later in the *Texas Common Point Case*, 26 I. C. C., 528, 534, the Commission was asked to modify the common-point territory in the interest of particular communities. Although intimating in the latter case that the group was perhaps unduly large, the Commission nevertheless declined to act upon records that failed to lay before it in a broad way the interests of the other communities in that rate adjustment. The record here is defective in the same respect. It does not give us a view of the whole situation sufficiently broad to justify the change asked in a relationship of such long standing. The result fairly to be expected from the findings and order of the majority will be a succession of separate complaints in which other communities in the common-point territory will point out the consequence to them growing out of the relief here given to Dallas and Fort Worth. We shall probably be some years in settling anew the relationships of these points in Texas, although in a proceeding involving the whole common-point territory a wise and consistent adjustment might be reached in one report and order.

DANIELS, *Commissioner*, dissenting:

The complaint in this case is based on two allegations. The first is that carload commodity rates on traffic from St. Louis and from Kansas City as well as from points basing on those gateways to northeast Texas are unjust and unreasonable *per se*. The second allegation is that the rates in question subject Dallas and Fort Worth and other points in northeast Texas to undue and unreasonable prejudice and disadvantage in favor of Shreveport and Texarkana. Under this second head of the complaint it is urged that the commodity rates to northeast Texas points should exceed the commodity rates to Shreveport by not more than the differences in the class rates

normally applicable to these commodities to the contrasted points of destination.

The first allegation of the complaint in so far as it relates to rates from points basing on St. Louis and Kansas City is found to be unsubstantiated. The majority report says that—

Where through rates are made by combination of local rates and one of these local rates is found to be unreasonable, it is inferable that through rates that are made by the use of this unreasonable component are unreasonable. In this case the through rates to Texas points from defined territories are not generally so made. They are constructed by the use of differentials from the various groups as shown below:

* * * * * *

The through rates are constructed by adding or subtracting the differentials shown above to or from the rates from St. Louis. These differentials are in many instances very much less than the local rates to St. Louis or to any points in the St. Louis group. Should it be shown that the rates from St. Louis to any of these Texas points are unreasonable, it could not be concluded from that circumstance that the through rates from all other defined territories are unreasonable.

In this I concur; but it should be noted that in case from defined territory the proportional to St. Louis is less than the local rate by an amount under 5 cents per 100 pounds, the reduction proposed in the majority report on rates from St. Louis proper will effect a reduction under the fourth section in rates from the defined territory.

In regard to the unjust discrimination alleged as between rates from St. Louis and Kansas City to northeast Texas, in comparison with rates from the same points of origin to Shreveport and Texarkana, the majority report finds that, distance alone considered, the existing disparity in rates is not justified. It says:

It is perfectly clear that, considering St. Louis alone as a point of origin and contrasting the rates from that point to Shreveport with the rates to Dallas and Fort Worth, the existing difference in rates is not justified by the existing difference in distance.

It also finds that rates from St. Louis to Shreveport are not in the majority of instances held down to the combination rate from St. Louis to a lower Mississippi River crossing plus the rate westward from the crossing to Shreveport. The majority report says:

From this it would appear that the St. Louis rates proper to Shreveport, on the commodities above referred to, are not to any considerable extent depressed by reason of low combinations on Mississippi River points.

And further—

As to traffic from St. Louis and Kansas City to points in northeast Texas, those points are at a disadvantage as compared with Shreveport, a competing locality, by reason of the shorter distance to Shreveport, and the competitive conditions at that point, but that natural disadvantage ought not to be unduly increased by an artificial rate adjustment.

Again—

Shreveport's proximity to the Mississippi River, together with the difference in distance, can not be regarded as a justification for the existing spread between Shreveport and northeast Texas in rates from St. Louis and Kansas City for an average difference in distance of approximately 88 miles.

If this conclusion is substantiated by the record, then the allegation of unjust discrimination has been established, and it would seem that the appropriate remedy would be to issue an order requiring the carriers to remove the discrimination found to exist. If, however, the record also shows that the rates from Kansas City and St. Louis to northeast Texas are intrinsically unreasonable, it would be proper to require a reduction in these rates. But only if it is independently established that these rates are intrinsically unjust and unreasonable can we avoid making an order requiring the removal of the unjust discrimination aforesaid. It is therefore necessary to inquire what the record establishes as to the intrinsic unreasonableness of the rates from St. Louis and Kansas City to northeast Texas.

There are in general, in the absence of an established valuation of carriers' property for rate-making purposes, two methods by which to appraise the alleged intrinsic unreasonableness of any rate. The first method is a rate comparison of similar hauls of the same or similar traffic, and these comparisons commonly are set forth in terms of revenue per ton-mile and per car-mile. The second method is an appraisal of the gains or earnings of the carriers from traffic judged in the light of whatever information is available as to the fair value of their property devoted to the public service. Except for the comparison of rates from St. Louis and Kansas City to northeast Texas with rates from the same points to Shreveport and Texarkana, the report does not cite any such rate comparisons. Moreover, the use of rates to Shreveport as a criterion of the intrinsic reasonableness of the rates from these two gateways to northeast Texas is peculiarly inappropriate for the reason that this Commission has said, not once but repeatedly, that rates from St. Louis to Shreveport are depressed and subnormal. Thus, in *Monroe Progressive League v. St. L., I. M. & S. Ry. Co.*, 15 I. C. C., 534, we said:

Rates from St. Louis by river had been made the same to Vicksburg and Natchez as to New Orleans, and here again the railroads were obliged to adopt the adjustment established before their advent. As a result, New Orleans, Natchez, and Vicksburg and other Mississippi River points have ever since enjoyed the advantage in rates established as a result of the controlling competition of water carriers on the Mississippi River.

And in *Texarkana Freight Bureau v. St. L., I. M. & S. Ry. Co.*, 28 I. C. C., 569, the Commission clearly recognized that rates to
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Shreveport were depressed below a normal basis. We said, at page 580:

On behalf of the intervener a list of commodities other than those mentioned in complainants' petition was filed, which showed the same rates to Texarkana as to Shreveport on 24 commodities and lower rates on 72 commodities. Another exhibit filed by the intervener shows that 102 of the commodity rates to Shreveport mentioned in complainants' petition are no lower than the actual combination of locals to or from Vicksburg or New Orleans. We have made a comparison of commodity rates from St. Louis and defined territories to Shreveport and Texarkana with rates from the same points of origin to Milfay and Chickasha, Okla., and this shows that in nearly every instance the rates in effect to both Texarkana and Shreveport are lower than those maintained to the Oklahoma points. It appears that the direct lines to Shreveport have depressed their rates to meet the combinations through the lower Mississippi River crossings. It is evident that as to these commodities the routes via the lower Mississippi River crossings make the rates to Shreveport, and consequently the direct lines from St. Louis to Shreveport can not be required to raise their rates in order to place Texarkana upon the same basis as Shreveport.

And again, page 583:

There is no doubt that the rates from the lower Mississippi River crossings to the Shreveport group were originally influenced by active water competition.

It thus appears that in appraising the intrinsic reasonableness of the rates from St. Louis and Kansas City to northeast Texas the rates from St. Louis to Shreveport give us no adequate criterion of what is a normal or proper rate; and in the absence of any other evidence of record making a comparison of ton-mile or car-mile revenues, it is submitted that the establishment of the allegation of the intrinsic unreasonableness of these rates has not been demonstrated.

It is also worthy of note that the burden of establishing affirmatively this contention is cast by the act upon the complainants; and that burden is in this case the more onerous by reason of our finding in *Railroad Commission of Texas v. A., T. & S. F. Ry. Co.*, 20 I. C. C., 463. In this last report the Commission said:

After a careful consideration of the whole record, and having in mind the public interest, the interests of shippers, and also the interests more particularly of such of the defendants as draw their revenues largely if not entirely from the rates here involved, we have reached the conclusion, all things being considered, that no grounds have been shown or have been disclosed by our own investigations for making any substantial disturbance in the rate schedules of the defendants that went into effect on August 10, 1908. We do not find that they have so increased the revenues of the defendants as to make them extortionate or to yield earnings that are unduly large, as alleged. We shall not therefore interfere with the commodity rates that were made effective by the defendants on August 10, 1908, it being understood, of course, that any particular rate or set of rates in those schedules is still open to attack before this Commission on the grounds that are ordinarily assigned in challenging the reasonableness of a rate or rates in effect.

The report in the instant case endeavors to distinguish the pronouncement in the case just cited by reference to the last statement therein, and says:

Where a rate group is so large as this, comprising an area of approximately 120,000 square miles, it may very well be that a rate which is entirely reasonable when applied to the average haul to points within the group is unreasonable when considered as applied to a haul to the nearer portion of the group to which the distance is materially less.

The possible exception mentioned in the case cited above might permit a reduction in a particular rate, but can hardly be construed as an expression by the Commission that a large number of commodity rates and their general level are assailable on the ground of intrinsic unreasonableness.

It would appear thus to be apparent that the alleged intrinsic unreasonableness of these rates to northeast Texas has not been established of record by any germane and appropriate rate comparisons.

The other usual test of the excessive character of rates is found in the gains of the carriers on traffic carried into any particular territory. Here, however, the evidence of record, and even that recited in the majority report, negatives all idea of exorbitant earnings. It is notorious that many of the carriers, in this region in particular, are and for some time have been in the utmost financial jeopardy. The capitalized value basis of the property of many of the carriers relative to their earnings per mile, even as shown in the majority report, is so small as significantly to suggest that a reduction in rates must in these cases verge perilously near upon something very much akin to confiscation; and if we are justified in entertaining the surmise that the small earnings of the shorter roads are due to their meager divisions of joint rates with more powerful connections it certainly can not be contended that a reduction in the total rate to be divided will result in anything but an additional cut in the earnings that will accrue to the shorter and weaker Texas lines.

Even if the intrinsic unreasonableness of these rates had been so established, the method by which the majority report proposes a horizontal reduction of 5 cents per 100 pounds, save for commodities that are excepted from such reduction and in somewhat arbitrary manner, might well raise the question of the particular measure of the reduction. For example, if we take rates from St. Louis to Dallas, furniture at 85 cents is excepted from the reduction, while agricultural implements and vehicles, mixed, and threshers and engines at 85 cents are included in the reduction; binder twine at 62 cents is excepted, but starch at 62 cents is reduced; bags and bagging and clayed and cotton bags at 60 cents are excepted, but

iron angle bars at 60 cents are reduced; canned goods at 51 cents are excepted, but soda at 51 cents is apparently reduced; minced meat and glucose at 49 cents are excepted, but sugar and sirup at 49 cents are reduced. The list of exceptions, therefore, seems to be wholly arbitrary, based upon no ascertainable principle and justified by no facts recited in the majority report.

If, as is here contended, there is a failure of convincing evidence with reference to the intrinsic unreasonableness of rates, we are thrown back upon the allegation of discrimination, which the majority report would seem to find in its condemnation of the spread as between Shreveport and northeast Texas. Accordingly, it would seem that the Commission should be confined to the issuance of an order requiring the removal of such discrimination.

As the majority report indicates, the proposed finding in this case will in a measure tend to the disruption of the Texas common-point territory. Upon an adequate record we might have no insurmountable difficulty in replacing the common-point system by a just and equitable substitute. At the same time the long existence of this extensive blanket and the Commission's repeated refusals to break it up create a presumption in its favor. In *Dallas Freight Bureau v. M., K. & T. Ry. Co.*, 12 I. C. C., 427, the Commission in commenting upon the purpose of Dallas to secure exemption from the common rate system, said:

While such singleness of purpose is not fairly open to criticism but, on the contrary, is entirely proper, it is clear that this Commission has a wider duty to perform and must not lose sight of the effect and natural consequences of its own acts. If the reductions demanded on this petition are made effective by the order of the Commission the result will be either to segregate Dallas from the other common points and establish a precedent for a similar complaint by the next point south of Dallas, and thus gradually to break up the Texas rate system, or, as heretofore pointed out, it will compel the carriers to extend the reductions to all the common points.

This is not an isolated instance of the Commission's previous attitude toward the Texas common-point territory, a statement which is fully attested by an analysis of the following cases: *Dallas Freight Bureau v. A. & N. W. Ry. Co.*, 9 I. C. C., 68; *Dallas Freight Bureau v. M., K. & T. Ry. Co.*, 12 I. C. C., 427; *R. R. Comm. of Texas v. A., T. & S. F. Ry. Co.*, 20 I. C. C., 463; *Texas Common Point Case*, 26 I. C. C., 528; *Williams Co. v. V., S. & P. Ry.*, 16 I. C. C., 482; and *Chamber of Commerce of Houston v. H. E. & W. T. Ry. Co.*, 32 I. C. C., 203.

Another serious objection to what is proposed in the majority report is that it accords to northeast Texas reductions in rates from Kansas City and St. Louis because of the geographical proximity of those two gateways, without subjecting northeast Texas to a corre-

sponding disadvantage in rates on traffic from the east, south, and west, where despite its relative geographical disadvantage, northeast Texas retains a basis more favorable than territory to the east, south, or west, to the relative disadvantage of San Antonio, Waco, and other important Texas points.

If we are to dismember this extensive blanket we should do so on a consistent plan, requiring northeast Texas to accept the disadvantages of its geographical location as well as to obtain the advantages of its favorable proximity to important gateways. The plan in the majority report is one-sided, dismembering the blanket only to accord advantages to northeast Texas and reductions to the carriers without any compensatory increases on traffic coming to northeast Texas from other points on the compass, and without according to the carriers compensatory increases for local hauls into the farther distant Texas common-point territory.

Another serious disadvantage attaching to this partial dismemberment of the blanket is the disruption of rates into the territory north of northeast Texas. If Oklahoma interests should demand corresponding reductions, it would seem that on the logic of the majority report they may well be entitled thereto.

For the reasons above cited I am unable to concur in the majority report.

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INVESTIGATION AND SUSPENSION DOCKET No. 753.
GRAIN FROM NEW ORLEANS, LA.

Submitted May 10, 1916. Decided July 8, 1916.

Proposed cancellation of commodity rates on grain, grain screenings, and animal and poultry feeds from New Orleans, La., to points in Carolina territory found not justified.

Theodore Brent and John A. Smith for New Orleans Joint Traffic Bureau.

John B. Rucker for Baton Rouge Chamber of Commerce.

E. A. de Funiak for Louisville & Nashville Railroad Company.

R. Walton Moore and Willis H. Fowle for other respondents.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By schedules filed to take effect December 1, 1915, respondents proposed to cancel their carload and less-than-carload commodity rates on grain, grain screenings, and animal and poultry feeds from New Orleans, La., to points in Carolina territory, thereby rendering applicable class D rates, any quantity, which are higher. Carolina territory includes that portion of Virginia, the Carolinas, and Georgia lying south of the main line of the Norfolk & Western Railway from Norfolk to Roanoke, Va., thence to Bristol, Tenn.-Va., and north of a line from Atlanta, Ga., through Augusta, Ga., to Charleston, S. C. 34 I. C. C., 430, 431. Upon protests by traffic organizations of New Orleans and Baton Rouge, La., Lynchburg, Va., and Vicksburg, Miss., the schedules were suspended until March 30, 1916, and later until September 30, 1916. The protests are mainly based on discrimination which it is stated would result against New Orleans and in favor of Memphis, Tenn., if the commodity rates are canceled. Testimony for respondents was presented by the Southern Railway and the Louisville & Nashville Railroad only.

Grain and grain products in carloads from beyond Memphis and New Orleans move from those gateways to Carolina territory on equal proportional rates. Transit is available in connection with these rates which are unlimited at Memphis as to territory of origin of the grain but are restricted at New Orleans to grain originating west of the Mississippi River. It is not proposed to increase these rates, which do not apply on manufactured feed. Local car-

load commodity rates apply on grain and grain products from Memphis which are the same in amounts as the proportional rates to South Carolina but higher than the proportional rates to North Carolina and Virginia. Class D rates apply from Memphis proper to Carolina territory on animal and poultry feeds, in carloads, and on grain, grain screenings, and animal and poultry feeds in less than carloads. Commodity rates apply from New Orleans proper to the Carolinas on grain and grain screenings, carload and less than carload, which are somewhat higher than the proportional rates. On animal and poultry feeds there are any-quantity commodity rates from New Orleans considerably lower than the corresponding class D rates but, generally speaking, not different from the class D rates from Memphis. Protestants are mainly interested in animal and poultry feeds, which move largely in less-than-carload lots.

The following table shows the distances from New Orleans and Memphis to representative points in Carolina territory, together with the present and proposed less-than-carload rates on animal and poultry feeds from New Orleans, and the less-than-carload rates on the same commodities from Memphis; rates are stated in cents per 100 pounds:

To—	From New Orleans.			From Memphis.	
	Dis- tance.	Pres- ent rate.	Pro- posed rate.	Dis- tance.	Pres- ent rate.
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>
Timmons ville, S. C.....	787	32.0	37.0	726	29.0
Columbia, S. C.....	720	28.0	30.0	637	28.0
Wilmington, N. C.....	930	19.0	24.0	840	19.0
Lumberton, N. C.....	862	31.0	35.0	772	31.0
Weldon, N. C.....	1,007	23.0	37.0	946	23.0
Newbern, N. C.....	966	20.0	37.0	905	20.0
Raleigh, N. C.....	935	27.0	35.0	823	27.0
Danville, Va.....	902	18.0	35.0	788	18.0

A statement filed by protestants of the total movement in 1915 of animal and poultry feeds from New Orleans to the consuming territory involved shows the following approximate results:

	Carload.	Less than carload.
Tonnage.....pounds..	198,000	2,208,170
Revenue at present rate.....	\$353.60	\$6,103.06
Revenue at proposed rates.....	\$676.00	\$8,137.93
Average present rate per 100 pounds.....cents..	17.85	27.64
Average proposed rate per 100 pounds.....do....	34.14	36.85
Per cent of increase.....	91	33.3

It is in evidence that the proportional rates on grain from Memphis to Carolina territory were established to equalize Memphis with Ohio and Missouri river gateways on grain from the west, and that

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this equalization was extended to New Orleans so that carriers operating to or through that point could participate in grain traffic from Texas and other territory west of the Mississippi River. Respondents assert that the normal basis for rates on grain and grain products from New Orleans proper to Carolina territory is 10 cents over Atlanta, Ga., and 4 cents over Mobile, Ala. The rates from New Orleans are said to have no relation to the rates from Memphis, except that the latter are observed as minima. Respondents argue that it was never intended to equalize rates from Memphis and New Orleans proper, and that the establishment of the present rates in 1912 was due to an error in tariff construction. This error, it is stated, was not discovered until 1914, when shippers at Mobile, the rates from which point were and are higher than the rates from New Orleans, demanded reductions. It is claimed that the application of the class D rates as proposed will restore New Orleans to the normal basis and also obviate the necessity of reducing rates from Mobile and, possibly, from Pensacola, Fla. Protestants state that the so-called normal basis was never adhered to with respect to rates on grain. Respondents were given an opportunity to cite tariffs to substantiate their testimony in this respect, but failed to do so.

Respondents stress the differences in distance from Memphis and New Orleans, which they seek to illustrate by the following table showing the distances from those points to the three principal gateways to Carolina territory:

From—	To Asheville, N. C., through Paint Rock, N. C.	To Atlanta, Ga.	To Augusta, Ga.
	<i>Miles.</i>	<i>Miles.</i>	<i>Miles.</i>
New Orleans.....	738	403	638
Memphis.....	550	418	590
Difference in favor of Memphis.....	188	75	49

The Southern Railway states, however, that its principal routes from Memphis and New Orleans are through Paint Rock and Atlanta, respectively, and that the Augusta route is little used. Atlanta is also the Louisville & Nashville's principal gateway from New Orleans. While, therefore, these comparisons are unsatisfactory, the distances from New Orleans are greater than from Memphis, the differences depending upon gateways and routes respectively used.

The 10-cent addition which it is proposed to make to the New Orleans-Atlanta rate is compared by respondents with 10-cent rates,
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both intrastate and interstate, maintained by the Southern Railway between points in the south for hauls ranging in averages from 15½ to 90½ miles and compositely averaging 46½ miles. Rates from Cincinnati, Ohio, Louisville, Ky., and St. Louis, Mo., to points in Kentucky, Tennessee, Georgia, Alabama, and Texas, are cited which, distances considered, compare not unfavorably with the present rates from Atlanta and the proposed rates from New Orleans to Carolina territory. The present rates to Carolina territory from New Orleans are shown to be upon a lower basis than the corresponding rates from Birmingham and Mobile, Ala., and Macon and Atlanta, Ga., feed milling points, which are nearer the destinations involved than is New Orleans. It is stated that the feed traffic does not load heavily, and also that it is particularly susceptible to injury from heat and moisture.

The principal competitors of New Orleans grain and feed dealers are located at Memphis. Protestants assert that the commodity rates from New Orleans to Carolina territory have no relation to the rates to Atlanta; that they were established for the sole purpose of enabling New Orleans to compete with Memphis in Carolina territory; and that the New Orleans dealers can not stay in the field if the proposed rates are rendered applicable. They contend that rates on grain from basing points are and properly should be equalized without strict regard to differences in distance because of the competitive nature of the traffic. By the use of the present less-than-carload rates on animal and poultry feeds to certain specific points it is shown that the average ton-mile earnings on traffic to the southeast, involving shorter hauls from New Orleans than from Memphis, are 12.6 mills from New Orleans and 10.98 mills from Memphis, while to Carolina territory the average ton-mile earnings are 6.34 mills from New Orleans and 6.43 mills from Memphis. The average ton-mile earnings at the proposed rates from New Orleans would be 8.24 mills. It is argued from this showing that the carriers disregard differences in distance in order to allow Memphis to compete with New Orleans in territory nearer to the latter while they urge the differences in distance as one of the principal reasons for establishing rates which will prevent New Orleans from competing in territory which is nearer Memphis. Protestants also state that the proposed rates from New Orleans to various points, mostly in the northern portion of Carolina territory, exceed the aggregates of the class D rates to and from Memphis.

While the rates which respondents seek to render applicable may not be inherently unreasonable, the only justification disclosed for higher rates on grain and grain products, including animal and poultry feeds, to Carolina territory from New Orleans proper than

from Memphis is the difference in distance. While by reason of this difference the rates from New Orleans may properly be somewhat higher than the rates from Memphis, the proposed rates, if allowed, would result in a spread which is not justified. The record does not afford a basis for determining what difference should be made in the rates from the former as compared with those from the latter point. We, therefore, find that respondents have not justified the proposed cancellation of the commodity rates in issue, and an order will be entered requiring the cancellation of the suspended schedules.



No. 7877.

PREY BROTHERS & COOPER LIVE STOCK COMMISSION
COMPANY

v.

TEXAS & PACIFIC RAILWAY COMPANY ET AL.

Submitted March 27, 1916. Decided June 28, 1916.

Charges collected for the transportation of 16 carloads of range cattle consigned from Monahans, Tex., to Gillette, Wyo., and reconsigned en route to Fountain, Colo., found to have been unlawful. Reparation awarded.

J. H. Burkhardt for complainant.

A. S. Brooks for Texas & Pacific Railway Company, Colorado & Southern Railway Company, and Fort Worth & Denver City Railway Company.

John H. Schultz for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the live-stock commission business at Denver, Colo. By complaint, filed April 1, 1915, it alleges that defendants' charges for the transportation of 16 carloads of range cattle consigned from Monahans, Tex., to Gillette, Wyo., and reconsigned en route to Fountain, Colo., were in violation of the long-and-short-haul rule of the fourth section of the act, and unlawful. Reparation is asked. Subsequently to the hearing the complaint was amended to make the Pan Handle & Santa Fe Railway Company a party defendant. All of the defendants

waived service of the amended complaint and agreed to submit the case upon the record as made.

The shipments originally were part of a consignment of 35 carloads of cattle shipped in April, 1914, by complainant and another cattle dealer, from Monahans, consigned to Gillette. They moved: Texas & Pacific; Atchison, Topeka & Santa Fe; Pecos & North Texas, now known as the Pan Handle & Santa Fe; Fort Worth & Denver City; and Colorado & Southern railroads to Pueblo, Colo., where the Colorado & Southern was requested to reconsign them to Fountain at the rate applicable from Monahans to Denver, Fountain being intermediate to Denver. The Colorado & Southern operates over the tracks of the Atchison, Topeka & Santa Fe from Pueblo to Denver and handles no freight traffic between Pueblo and Colorado Springs, Colo., and Colorado Springs and Denver. No joint rate was applicable on the traffic from Monahans to Fountain. The Colorado & Southern refused to reconsign the cattle as requested, advising the shippers that only the Atchison, Topeka & Santa Fe Railway could handle traffic to Fountain. The shippers thereupon divided the consignment, complainant receiving 16 carloads as his share and forwarding his shipments to Fountain over the Atchison, Topeka & Santa Fe. Charges were collected on the basis of \$95 per car 36 feet 7 inches long, and certain percentages of that rate on cars of other lengths, from Monahans to Pueblo, and 6 cents per 100 pounds, minimum weight 22,000 pounds, thence to Fountain. Complainant bore one-half of the freight charges on all of the shipments from Monahans to Pueblo and all of the freight charges on the 16 shipments from Pueblo to Fountain, and contends that the charges should not have exceeded those which would have accrued on the basis of a rate of \$95 per car. Defendants applied a \$95 rate from Monahans to Denver, Colorado Springs, Pueblo, Trinidad, and Walsenburg, Colo., and since the shipments moved have made it applicable to Fountain in connection with the Denver & Rio Grande Railroad.

The maintenance of a higher rate to Fountain than to Denver was not and is not covered by any fourth section application and violated and violates the long-and-short-haul rule of the fourth section.

The Colorado & Southern and the Atchison, Topeka & Santa Fe admit that there was no justification for a higher rate to Fountain than to the other Colorado points to which the \$95 rate applied and express willingness to establish the \$95 rate to Fountain.

We find that the charges collected on the shipments from Monahans to Fountain were and are unlawful to the extent that they exceeded and exceed the charges that would accrue on basis of \$95

per car 36 feet 7 inches long, the rate contemporaneously in effect from Monahans to Colorado Springs and other points named; that complainant made the shipments as described and paid and bore charges thereon at the rate herein found unlawful; that it has been damaged to the extent that the charges paid exceeded the charges that would have accrued at the rate herein found lawful; and that it is entitled to reparation with interest. The exact amount of reparation due can not be determined on the present record, and complainant should prepare a statement showing as to each shipment on which reparation is claimed the date of shipment, points of origin and destination, the route, weight, car number and initials, rate applied, charges collected and date of payment, and the amount of reparation due under our findings herein, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared by complainant and verified by defendants we will consider the entry of an order awarding reparation. An order will be entered for the future maintenance of the rate found lawful.

40 I. C. C.

No. 7962.

UNION SAW MILL COMPANY

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY
COMPANY ET AL.

PORTION OF FOURTH SECTION APPLICATION No. 629.

Submitted November 22, 1915. Decided July 6, 1916.

1. Rates charged for the transportation of furniture, in carloads, from St. Louis, Mo., and structural steel, in carloads, from Memphis, Tenn., to Huttig, Ark., not found unreasonable.
2. Rates charged for the transportation of woodworking machinery, stoves, and cement, in carloads, from St. Louis to Huttig, found unreasonable to the extent that they exceeded the aggregate of the rates contemporaneously in effect to and from Litroe, La.
3. Shipment of lumber from Huttig to Elgin, Okla., found to have been mis-routed. Reparation awarded.
4. Fourth section relief denied.

W. J. Thomas for complainant.

Henry G. Herbel and *Fred G. Wright* for St. Louis, Iron Mountain & Southern Railway Company.

Carl Giessow for St. Louis & San Francisco Railroad Company and its receivers.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of lumber, with its principal office at Huttig, Ark. By complaint, filed April 29, 1915, it alleges that the rates charged by defendants for the transportation of one carload each of stoves, cement, furniture, and woodworking machinery from St. Louis, Mo., to Huttig, structural steel from Memphis, Tenn., to Huttig, and lumber from Huttig to Elgin, Okla., between February 10, 1912, and August 5, 1913, were unreasonable. Reparation is asked and the establishment of reasonable rates for the future. The claims were presented to the Commission informally within the period of two years prescribed by the act. That portion of Fourth Section Application No. 629 in which authority is sought to continue rates on furniture, cement, and stoves from St. Louis, and structural steel from Memphis to

Litroe, La., which are lower than the rates contemporaneously applicable to Huttig and other intermediate points, was heard with the complaint.

The subjoined statement shows the weights of the shipments from St. Louis and Memphis to Huttig, the charges collected, the rates charged, and the rates asked. That portion of the complaint which involves a shipment of lumber from Huttig to Elgin will be considered later. All rates named herein are stated in cents per 100 pounds and, excepting rates on lumber, are the local rates of the St. Louis, Iron Mountain & Southern Railway.

	Weight.	Charges collected.	Rates charged.	Rates asked.
	<i>Pounds.</i>		<i>Cents.</i>	<i>Cents.</i>
Furniture.....	20,600	\$143.17	69.5	57.0
Machinery.....	24,000	154.80	64.5	48.0
Stoves.....	31,700	204.47	64.5	49.0
Cement.....	38,000	102.60	27.0	17.0
Structural steel.....	55,900	¹ 147.34	26.0	20.0

¹ Includes \$2 advanced charges unexplained.

Except for the rate on structural steel from Memphis, the rates asked are those which were in effect to Litroe. The rate on structural steel, in carloads, from Memphis to Litroe was 25 cents; the rate to Huttig, 34 cents. As a rate of 26 cents was charged, there is an outstanding undercharge of \$44.72 on the shipment.

Complainant offered no evidence in support of its allegation that the rates charged were unreasonable except a comparison with the rates and per ton-mile earnings on like traffic to Litroe. Defendant's earnings per ton-mile under the rates charged were as follows: Furniture, 26.6 mills; machinery and stoves, 24.7 mills; cement, 10.3 mills; structural steel, 20 mills. The rates asked would yield 21.8 mills on furniture, 18.4 mills on machinery, 18.7 mills on stoves, 6.5 mills on cement, and 15.3 mills on structural steel. The aggregates of the rates to and from Litroe, which were 61 cents on machinery, 62 cents on stoves, and 24½ cents on cement, were lower than the rates charged, and in the absence of specific through rates would have been applicable. Defendants offered evidence as to the dissimilarity of the circumstances and conditions controlling the rate adjustments to Huttig and Litroe.

Huttig and Litroe are situated on a branch line of the St. Louis, Iron Mountain & Southern Railway, which extends in a northwesterly direction from Monroe, La., to Felsenthal, Ark., where it connects with another branch line extending from Gurdon, Ark., through Collinston, La., to Vidalia, La. Huttig is 2 miles from Felsenthal, 43 miles from Monroe, 101 miles from Gurdon, and 37 miles from Collinston. Litroe is 4 miles south of Huttig. Shipments trans-

ported by the St. Louis, Iron Mountain & Southern Railway from Memphis to Huttig move through Collinston and Felsenthal, a distance of 256 miles. The distance from Memphis to Huttig by way of Gurdon is 332 miles. Traffic from St. Louis to Huttig may move either through Gurdon or through Collinston and Felsenthal. The distance through Gurdon is 581 miles; through Collinston and Felsenthal, 523 miles. Traffic from St. Louis and Memphis to Litroe moving over either route passes through Huttig.

Defendants assert that rates to Litroe are controlled largely by the rates to Monroe and that the latter rates are depressed by reason of rail-and-water competition. Monroe is in the so-called Shreveport group and is located on the main line of the St. Louis, Iron Mountain & Southern Railway, extending from St. Louis and Memphis to Alexandria and Lake Charles, La. Rates from St. Louis and Memphis to Collinston and other main-line points intermediate to Monroe conform to the long-and-short-haul rule of the fourth section. During the period involved rates to Litroe were the same as rates to Monroe. Defendants explain that traffic from St. Louis and Memphis to Monroe may move through Litroe instead of over the more direct main-line route through Collinston, and that the Monroe basis of rates originally was extended to Litroe on account of a misunderstanding as to the requirements of the amended fourth section.

The explanation is not convincing, for higher rates were carried to Huttig and other points in Arkansas intermediate to Monroe over the route through Litroe. There was no greater necessity, under the fourth section, for observing Monroe rates as the maximum at Litroe than at Huttig.

The distance from St. Louis to Monroe through Collinston is 501 miles; through Gurdon and Litroe, 570 miles; from Memphis to Monroe through Collinston, 239 miles; and through Gurdon and Litroe, 375 miles. The route from St. Louis to Monroe through Gurdon and Litroe is about 14 per cent longer than the direct route through Collinston. The route from Memphis to Monroe through Collinston is approximately 57 per cent shorter than the route through Gurdon and Litroe. Defendants' application for authority to continue through rates from St. Louis and Memphis to Monroe which are lower than the rates contemporaneously in effect to Huttig and other intermediate points on the route through Litroe was not set for hearing with the complaint and has not been determined.

Defendants also argue that the disparity between the rates to Huttig and to Litroe is due in part to the necessity of meeting at Litroe cross-country competition with neighboring points on the Chicago, Rock Island & Pacific Railway, and to the fact that competition with water carriers has induced the establishment to Louisiana points of specific commodity rates on numerous commodities

which move under class rates to points in Arkansas where the same competitive conditions are not controlling.

The rates to Litroe and Huttig have been readjusted since the complaint was filed. The present rates to these points on the commodities involved and to other branch-line points between Monroe and Felsenthal and Gurdon and Collinston are as follows:

From St. Louis, Mo., to—	Wood-working machinery.	Stoves.	Cement.	Furniture.	From Memphis, Tenn., structural steel.
Gurdon, Ark.....	154.0	154.0	18.0	51.0	25.0
Camden, Ark.....	154.0	44.0	18.0	51.0	25.0
Griffin, Ark.....	155.0	155.0	18.0	56.0	25.0
El Dorado, Ark.....	156.0	46.0	18.0	56.0	25.0
Strong, Ark.....	164.5	164.5	18.0	63.0	33.0
Felsenthal, Ark.....	164.5	164.5	18.0	63.0	33.0
Huttig, Ark.....	164.5	164.5	20.0	63.0	33.0
Litroe, La.....	57.0	55.0	20.0	65.0	30.0
Farmersville, La.....	57.0	55.0	20.0	65.0	30.0
Spencer, La.....	57.0	55.0	20.0	65.0	30.0
Sterlington, La.....	57.0	55.0	20.0	65.0	30.0
Lamkin, La.....	57.0	55.0	20.0	65.0	30.0
Monroe, La.....	52.0	50.0	18.0	60.0	25.0
Vaughn, La.....	52.0	50.0	18.0	60.0	25.0
White, Ark.....	164.5	164.5	18.0	63.0	33.0

¹ Class rates.

The class rates now in effect from St. Louis and Memphis to Huttig do not exceed the class rates to Litroe. It is said that the present rates to Huttig and points on the Gurdon branch are based on the rates to Gurdon and are graduated according to the distances from that point; that the present rates to Litroe are based on the Monroe combination; and that the general basis for making rates to branch-line points in Louisiana is to combine the rate to the main-line junction with the local rates beyond. We observe, however, that this basis has not been employed in constructing rates to Vaughn, La., or other branch-line points between Vaughn and Collinston. The same rates are carried to these points as to Monroe. As previously noted, the short-line route from St. Louis and Memphis to Litroe is through Collinston and Felsenthal. The distances from Collinston to Huttig and from Monroe to Litroe are approximately the same, and if distance from the nearest main-line junction were a determining factor in making through rates to interior branch-line points, it is apparent that the rates to Huttig should not exceed the rates to Litroe. Defendants assert, however, that the rates to Litroe are not a fair measure of the rates to intermediate points because they are based on a combination of low water competitive rates to Monroe, plus the Louisiana intrastate rates beyond, which are said to be less than reasonable local rates. Rates to Monroe are made on the basis prescribed in *Monroe Progressive League v. St. L., I. M. & S. Ry. Co.*, 15 I. C. C., 534.

We find that for the future the rates from Memphis and St. Louis to Litroe on the commodities involved should not be exceeded at intermediate points on the routes from Memphis through Collinston, and from St. Louis through Gurdon or Collinston. Defendants' application for authority to continue rates on furniture, cement, and stoves, in carloads, from St. Louis, and on structural steel from Memphis to Litroe, in carloads, which are lower than the rates contemporaneously applicable to Huttig and other intermediate points will accordingly be denied.

There remains for consideration the question of reparation. In *Appalachia Lumber Co. v. L. & N. R. R. Co.*, 25 I. C. C., 193, which involved a claim for reparation based on the carrier's failure to observe the long-and-short-haul rule of the fourth section, we said that no reparation can be awarded in such cases up to the time that the Commission passes upon the carrier's application for relief, "unless, possibly, a case is made out under the third section, which might carry with it an award of damages, or unless under the first section the rate to the intermediate point has been found unreasonable." In this case no violation of the third section is alleged, and the record does not sustain complainant's contention that the rates charged on furniture and structural steel were unreasonable to the extent that they exceeded the rates to Litroe, the more distant point. We find, however, that the rates charged on the shipments of machinery, stoves, and cement, in carloads, from St. Louis to Huttig were unreasonable to the extent that they exceeded the Litroe combination rates of 61 cents on machinery, 62 cents on stoves, and 24½ cents on cement. We further find that complainant made the shipments as described, and paid and bore charges thereon at the rates herein found to have been unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rates herein found to have been reasonable; and that it is entitled to reparation from defendants in the sum of \$25.83, with interest.

The shipment of lumber from Huttig to Elgin was tendered on a bill of lading, in which the shipper had inserted routing by way of "I. M. Van Buren, Frisco Del.," and a rate of 24 cents. The shipment weighed 58,700 pounds and moved: St. Louis, Iron Mountain & Southern Railway to Van Buren, Ark.; St. Louis & San Francisco Railroad beyond. Charges were collected in the sum of \$246.54, at a rate of 42 cents, based on the aggregate of the intermediate rates to and from Van Buren. The rate of 24 cents named in the bill of lading was not in effect over any route from Huttig but was the published rate from Monroe. A combination rate of 31 cents was applicable by way of the St. Louis, Iron Mountain & Southern to Monroe, the Vicksburg, Shreveport & Pacific Railway to Shreveport,

the Kansas City Southern to Ashdown, Ark., and the St. Louis & San Francisco Railroad beyond, composed of a rate of 7 cents to Monroe and a rate of 24 cents beyond. Complainant contends that the shipment was misrouted and that the rate charged was unreasonable to the extent that it exceeded 24 cents.

A rate of 24 cents applied on lumber, in carloads, from points on the Chicago, Rock Island & Pacific Railway in the vicinity of Huttig, but no joint rates were, or are, in effect on lumber from Huttig or other points in that vicinity on the St. Louis, Iron Mountain & Southern Railway to Elgin.

Defendant St. Louis, Iron Mountain & Southern Railway contends that the shipment was not misrouted and denies that the rate charged was unreasonable.

The conflict between the routing instructions and the rate named in the bill of lading made it the duty of the initial carrier to obtain further and definite instructions from the consignor, and its failure to perform its duty renders it liable to complainant for the additional charges resulting from the misrouting.

We find that the rate by the route of movement is not shown to have been unreasonable, but that the St. Louis, Iron Mountain & Southern Railway misrouted the shipment; that complainant was damaged thereby to the extent of \$64.57, the difference between the charges lawfully applicable over the route of movement and the charges that would have accrued if the shipment had moved through Monroe; and that complainant is entitled to reparation in the sum of \$64.57, with interest.

Appropriate orders will be entered.

No. 7890.

AETNA EXPLOSIVES COMPANY

v.

**PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS
RAILWAY COMPANY ET AL.**

Submitted November 5, 1915. Decided June 28, 1916.

Defendants' combination rates for the transportation of common black powder from Goes, Ohio, to points in Virginia, West Virginia, and Kentucky on the Chesapeake & Ohio Railway not found unreasonable or unduly prejudicial. Complaint dismissed.

J. L. Malone for complainant.

J. S. Patterson for Chesapeake & Ohio Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of explosives, with its principal office at New York, N. Y., and a powder mill at Goes, Ohio. By complaint, filed April 8, 1915, it alleges that the refusal of the Chesapeake & Ohio Railway, hereinafter called defendant, to establish joint rates for the transportation of common black powder from Goes to points located on the Chesapeake & Ohio Railway in the states of Virginia, West Virginia, and Kentucky has subjected complainant to the payment of unreasonable rates and has placed it at a disadvantage in comparison with competitors in Pennsylvania and New Jersey, from whose mills on the Philadelphia & Reading Railway defendant participates in joint rates. The establishment of reasonable joint rates for the future is asked.

The official classification rates common black powder first class in carloads, minimum 10,000 pounds, double first class in less than carloads. Goes is on the line of the Pittsburgh, Cincinnati, Chicago & St. Louis Railway, 71 miles northeast of Cincinnati, Ohio. The rates on common black powder from Goes to the points in question are constructed by combining the class rates to and from junction points on defendant's line. Joint class rates are maintained from Goes to the points involved, but their applicability to common black powder is specifically excluded by appropriate tariff provision. Defendant does not participate in joint rates on common black powder from points on the Philadelphia & Reading to points in Virginia or to local points

on its line in West Virginia or Kentucky. It participates in such rates to common points at the western end of its line in West Virginia and Kentucky, but these rates were inaugurated by the more direct lines and were met by defendant for competitive reasons.

Complainant offered no evidence concerning the measure of the combination rates to any of the destinations; nor any evidence establishing that the absence of joint rates impairs the transportation service from Goes to the points in question. Complainant's competitors are not shown to enjoy more advantageous rates to any particular point and it does not appear that common black powder is sold in competition with other commodities taking lower rates. Complainant refers to tariffs naming joint rates on common black powder from points on the Philadelphia & Reading to certain points and joint rates participated in by defendant as an intermediate carrier; also in general to the joint class rates from Goes to Virginia cities and intermediate points. But no specific rates are contrasted with the rates in issue, and the conditions under which the rates named in the tariffs apply are not well shown.

The joint class rates from Goes to many of these points conform to the rates applicable from Goes to Baltimore, Md., or the Virginia cities. The rates from central freight association territory to Baltimore and the Virginia cities are on a relatively low level to meet the rates of carriers from trunk line territory to the same destinations, the history of which adjustment has been discussed in detail in former cases. Defendant has steadfastly declined to apply the present relatively low joint rates from Goes to the points of shipment on common black powder because of the hazards involved and the expense of the service. It has also consistently refused to assent to the application of joint rates to any local points on its line.

The mere fact that combination rates rather than joint rates apply on common black powder from and to the points in controversy is insufficient to show that the rates assailed are unreasonable or unduly prejudicial, and the complaint will be dismissed.

No. 7658.
HYDRAULIC-PRESS BRICK COMPANY
v.
PENNSYLVANIA COMPANY ET AL.

Submitted November 15, 1915. Decided July 6, 1916.

Rate on brick in carloads from Roseville, Ohio, to Huntington, W. Va., found not unreasonable, but unduly prejudicial to the extent that it exceeds rates on like traffic from New Lexington, Crooksville, and Shawnee, Ohio, to Huntington. Reparation denied.

Bulkley, Hauxhurst, Inglis & Saeger for complainant.
L. E. Hinkle for Pennsylvania Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of brick, with a sales office at Zanesville, Ohio. By complaint, filed January 13, 1915, it alleges that the rate charged by defendants for the transportation of certain carloads of brick from Roseville, Ohio, to Huntington, W. Va., between June 3 and October 26, 1914, was unreasonable and unjustly discriminatory, and that the present rate also is unreasonable and unjustly discriminatory. Reparation is asked.

Roseville is a local point on the rails of the Pennsylvania Company, 10.3 miles southwest of Zanesville, and shipments to Huntington may be carried by the Pennsylvania Company to Zanesville and the Baltimore & Ohio Railroad beyond, 219.6 miles; or by the Pennsylvania Company to Circleville, Ohio, by the Norfolk & Western Railway to Kenova, W. Va., and by the Chesapeake & Ohio Railway beyond, 170 miles. The short-line distance is 127.6 miles, but the short-line route is said to be unworkable. A joint rate of \$1.15 per net ton applied over both of the routes described, which has since been increased 5 per cent to \$1.21.

Complainant's evidence consists principally of comparisons of the rate assailed with rates from other brick-producing points in the general vicinity of Roseville. The territory about Roseville is divided into three rate groups, known as the Hocking, Shawnee, and Zanesville groups. The Hocking group extends roughly from Hamden, Ohio, to Guysville, Ohio, on the Baltimore & Ohio Southwestern

Railroad, and from Logan, Ohio, to Athens, Ohio, on the Hocking Valley Railway. The Shawnee group extends from Bristol, Ohio, to Shawnee on the Baltimore & Ohio Railroad, from Clay Bank to Corning on the Toledo & Ohio Central Railway, and from Tropic to Shawnee on the Zanesville & Western Railway. The Zanesville group extends from Glenford, Ohio, to Junction City and from Newark, Ohio, to Zanesville on the Baltimore & Ohio Railroad, from Trinway, Ohio, to Junction City on the Pennsylvania Company, from Glenford to Zanesville and from Fultonham to Crooksville on the Zanesville & Western Railway. It includes New Lexington on the Toledo & Ohio Central Railway.

Complainant's principal product at its Roseville plant, which is in the Zanesville group, is a face brick known to the trade as "flashed" or "iron spot" brick, both names being descriptive of the appearance of the brick because of the peculiar composition of the clay from which it is made. Bricks manufactured from this clay are no more valuable, however, than other face brick. The only real difference is in appearance. Complainant competes with manufacturers of brick at New Lexington and Crooksville in the Zanesville group, New Straitsville, Nelsonville, and McArthur in the Hocking group, and Shawnee in the Shawnee group. Its largest competitors are located at Shawnee, 45 miles from Zanesville, on the Baltimore & Ohio Railroad and the Zanesville & Western Railway. The only brick manufacturers on the line of the Pennsylvania Company in the Zanesville group other than complainant are located at Zanesville and at New Lexington, 21.8 miles southwest of Zanesville. The Pennsylvania Company publishes the same rate to Huntington from all three points. A rate of \$1.50 per ton was maintained from 1906 until 1911, when it was reduced to \$1.20. The \$1.15 rate was established in 1913. The history of the rates from other points in this territory does not appear of record; only that prior to March 29, 1914, they were 80 cents from certain points in the Hocking group to Huntington and 90 cents from other points in that group and from the Shawnee and Zanesville groups, and that on that date an attempt was made to increase the rates to Huntington from all three groups to \$1.15, which failed. *Brick Rates from Ohio Points to Huntington, W. Va.*, 28 I. C. C., 292. The present joint rates from Shawnee by way of the Baltimore & Ohio or the Zanesville & Western as originating carrier, from Crooksville by way of the Zanesville & Western as the originating carrier, and from New Lexington by way of the Toledo & Ohio Central as the originating carrier, and from Zanesville by the Baltimore & Ohio are 95 cents per ton, or 105 per cent of the previous rate. A rate of 80 cents applies to Huntington from the Hocking group points named. The 95-cent joint rates from Shawnee, Crooksville, and New Lexington not only apply by way of

Zanesville and the Baltimore & Ohio or by way of the Norfolk & Western and the Chesapeake & Ohio, but from Crooksville and New Lexington are applicable as well by the Pennsylvania Company as an intermediate participating carrier, since the tariffs are unrestricted as to routing. Defendants, therefore, maintain a joint rate from Roseville to Huntington 26 cents per ton higher than rates available to complainant's competitors, in which they participate from similarly situated points in the Zanesville and Shawnee groups.

Complainant cites other rates on brick as follows: \$1.42 from Cleveland to Cincinnati, Ohio, 289.6 miles, ton-mile earnings 4.8 mills; \$1.05 from Roseville to Toledo, Ohio, 224.9 miles, ton-mile earnings 4.8 mills; \$1.32 from Sandusky, Ohio, to Cincinnati, 237 miles, ton-mile earnings 5.6 mills; \$1.21 from Trinway to Cincinnati, 184.7 miles, ton-mile earnings 6.5 mills. All of these rates were established subsequently to *The Five Per Cent Case*, 31 I. C. C., 351; 32 I. C. C., 325, and are now in effect.

Defendants remark that the rates cited by complainant virtually are for one-line hauls within the state of Ohio and do not involve the payment of a bridge toll for crossing the Ohio River, whereas transportation from Roseville to Huntington through Circleville involves a three-line haul and the payment of a toll of 40 cents per ton for crossing the bridge over the Ohio River, which toll is deducted before the rate is divided. The following comparisons of rates to points in the general vicinity of Huntington are submitted:

	Miles.	Rate at time of shipment.		Present rate.	
		Per ton.	Per ton-mile.	Per ton.	Per ton-mile.
From Roseville, Ohio, to--			Mills.		Mills.
Huntington, W. Va.....	{ 170	\$1. 15	6. 8	\$1. 21	7. 1
	{ 219. 6	1. 15	5. 2	1. 21	5. 5
Ironton, Ohio.....	150	1. 10	7. 3	1. 16	7. 7
Portsmouth, Ohio.....	123	1. 10	8. 9	1. 16	9. 4
Parkersburg, W. Va.....	98. 6	. 90	9. 1	. 95	9. 6
Cincinnati, Ohio.....	158. 3	1. 15	7. 3	1. 21	7. 7
From Canton, Ohio, to--					
Huntington, W. Va.....	262	1. 35	5. 2	1. 42	5. 5
Ironton, Ohio.....	232	1. 35	5. 8	1. 42	6. 1
Portsmouth, Ohio.....	218	1. 35	6. 2	1. 42	6. 5
Parkersburg, W. Va.....	141	1. 35	9. 6	1. 42	10. 0
Cincinnati, Ohio.....	242	1. 35	5. 6	1. 42	5. 9

1 Via Circleville.

2 Via Zanesville.

The average ton-mile earnings on all freight for the year ended June 30, 1914, of the roads maintaining the route through Circleville were 4.09 mills for the Chesapeake & Ohio, 4.15 mills for the Norfolk & Western, and 5.74 mills for the Pennsylvania.

The Pennsylvania Company has no voice in the making of rates from points off its line in the Zanesville group. Its witness stated 40 I. C. C.

that any rate less than \$1.15 from Roseville would be unremunerative, and that the Pennsylvania Company was constantly losing business at competitive points in the Zanesville group on account of its refusal to meet the lower rates over other routes. The rates on brick from Roseville to various eastern cities are said to be less than the rates from points south of Roseville in the Hocking group.

Complainant emphasizes our finding in *Brick Rates from Ohio Points to Huntington, W. Va., supra*. That was a case in which the carriers failed to meet the burden of justifying the reasonableness of proposed increased rates. We have frequently held that brick is desirable traffic from the standpoint of loading, density, value, risk, volume, and other considerations which tend to determine the reasonableness of rates, and should be accorded low rates in comparison with most other traffic. In *Frederick Brick Works v. N. C. Ry. Co.*, 12 I. C. C., 13; *Nebraska Material Co. v. C., B. & Q. R. R. Co.*, 20 I. C. C., 89; *Ashland Fire Brick Co. v. S. Ry. Co.*, 22 I. C. C., 115; and *Standard Vitrified Brick Co. v. C., B. & Q. R. R. Co.*, 25 I. C. C., 669, we held the following rates to be reasonable for the distances shown:

Rate per 100 pounds.	Miles.	Per ton- mile.
<i>Cents.</i> 13.75 12.0 15.0 12.5	236 330 523 400	<i>Mills.</i> 11.6 7.27 5.73 6.25

We find that the rate assailed is not unreasonable. But all of these defendants have elected to maintain origin groups from which as a general rule blanket joint rates are applied. Zanesville on the north and Crooksville and New Lexington on the south are accorded the Zanesville group rate while Roseville is subjected to a higher basis. We therefore find that defendants subject traffic from Roseville to undue prejudice and disadvantage to the extent that the joint rate on brick in carloads from Roseville to Huntington, in which they participate, exceeds the joint rates on like traffic to Huntington in which they participate contemporaneously maintained from Crooksville, New Lexington, and Shawnee. The record does not contain sufficient proof of damage to complainant by reason of the unlawful discrimination found to justify an award of reparation and none will be made.

An appropriate order will be entered.

INVESTIGATION AND SUSPENSION DOCKET No. 784.
FRUITS AND VEGETABLES FROM TEXAS POINTS.

Submitted May 11, 1916. Decided July 7, 1916.

Following *The Ogden Gateway Case*, 35 I. C. C., 131, the proposed cancellation of joint carload rates on fruits and vegetables from producing points on the St. Louis, Brownsville & Mexico in connection with the San Antonio, Uvalde & Gulf, International & Great Northern, Texas & Pacific, St. Louis, Iron Mountain & Southern, and Missouri Pacific, through Odem, Tex., found to have been justified. Orders of suspension vacated.

R. C. Fulbright for St. Louis, Brownsville & Mexico Railway Company and Frank Andrews, its receiver.

Fred G. Wright for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company and B. F. Bush, its receiver.

L. M. Hogsett for International & Great Northern Railway Company and James A. Baker and Cecil A. Lyon, its receivers.

J. F. Garvin and *E. H. Coombs* for Missouri, Kansas & Texas Railway Company and C. E. Schaff, its receiver.

Frank H. Wash for protestants.

REPORT OF THE COMMISSION.

HALL, Commissioner:

The subject of this investigation is the proposed cancellation of joint carload rates on fruits and vegetables from points on the St. Louis, Brownsville & Mexico Railway, hereinafter called the Brownsville, via International & Great Northern, Texas & Pacific, St. Louis, Iron Mountain & Southern, and Missouri Pacific railways, hereinafter called the Missouri Pacific lines, to interstate points beyond or off those lines. The rates sought to be canceled are the same as those applicable via other routes which would not be affected by the proposed change.

Upon protests of shippers of fruits and vegetables grown along the Brownsville, and of agents of associations of such shippers, the operation of the tariff items in question, published to become effective January 28 and February 27, 1916, was suspended to May 27, 1916, and later to November 27, 1916.

By supplement, effective December 11, 1915, joint rates to many interstate destinations, both on and off the Missouri Pacific lines, were established for fruits and vegetables from points on the Browns-

ville via Odem, Tex., San Antonio, Uvalde & Gulf Railway to San Antonio, Tex., Missouri Pacific lines and connections beyond. By the same supplement joint rates to those destinations which had been in effect via Houston and Missouri Pacific lines and connections were canceled.

The items under suspension propose to cancel the joint rates via Odem, San Antonio, Missouri Pacific lines and connections, but, by another item, not suspended, joint rates have been reestablished via Houston, in connection with the Missouri Pacific lines, but only to points on those lines in Arkansas, Oklahoma, Kansas, Missouri, Illinois, and Tennessee.

The Brownsville extends from Brownsville to Houston, a distance of 372 miles, with a branch running from Harlingen to Sam Fordyce, all in the state of Texas. San Benito, Tex., may be taken as typical of the vegetable-producing region on this line. The junctions through which traffic may move north are at Houston with the Missouri Pacific lines, the Missouri, Kansas & Texas, and other lines; at Bay City with the Gulf, Colorado & Santa Fe; and at Odem with the San Antonio, Uvalde & Gulf. The distance from San Benito to Houston is 352.5 miles; to Bay City, 264.8 miles; and to Odem, 135.5 miles.

Protestants object to the proposed cancellation for the following reason: Under the tariffs now in effect shipments may be made to points on the Missouri Pacific lines and then reconsigned at the joint through rates to points off those lines. Under the proposed tariff such reconsignment to off-line points would be at the local rate from the original Missouri Pacific destination to ultimate destination, and shippers who wish to first "try out" important markets on the Missouri Pacific lines, before resorting to such off-line market, could no longer do so at the joint rate from origin to ultimate destination.

It is clear that the maintenance of the route via Odem results in short hauling the Brownsville, the originating carrier. It is equally clear that the route via Houston is reasonable. Under these circumstances can we require the continuance of the joint rates sought to be canceled? In *The Ogden Gateway Case*, 35 I. C. C., 131, the Commission held that it had no power to prevent the cancellation of through routes and joint rates which it could not order established. That decision is controlling here.

The question whether respondents should be required to establish joint rates to points beyond the lines of the Missouri Pacific via Houston and those lines was put in issue by the parties at the hearing. We are not persuaded that such rates should be established. Joint rates are at the present time applicable via Houston over several other lines.

It is our finding and conclusion that the tariff items under suspension have been justified. An order will enter accordingly.

No. 7993.
GOODMAN MANUFACTURING COMPANY
v.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY
COMPANY.

Submitted February 3, 1916. Decided July 6, 1916.

Charges collected for the transportation of two less-than-carload shipments of electric locomotive wheels on axles with hub attachments from Phildia, Iowa, to Chicago, Ill., found to have been unlawful. Complainant not shown to have been damaged. Complaint dismissed.

G. M. Stephen and J. S. Bolton for complainant.

R. W. Fyfe for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of mining locomotives and other machinery at Chicago, Ill. By complaint, filed May 10, 1915, it alleges that the rates charged by defendants for the transportation of two less-than-carload shipments of electric locomotive wheels and axles from Phildia, Iowa, to Chicago, in June and July, 1913, were unreasonable and unjustly discriminatory. Reparation is asked.

Each shipment consisted of a pair of wheels on an axle. An iron or steel hub 12 inches in diameter, weighing approximately 150 pounds, was pressed on the axle midway between the two wheels, serving as a device to which the gear wheels and accessories could be attached. The gear wheels were not attached, nor did they constitute any part of either shipment. The first shipment weighed 900 pounds, and charges were collected on it in the sum of \$4.50 at the second-class rate of 50 cents per 100 pounds. The tariff authority for this rating is not disclosed. The second shipment weighed 1,000 pounds, and charges were collected in the sum of \$6.80 at the first-class rate of 68 cents per 100 pounds, applicable to machinery, s. u., loose, less than carload.

Complainant contends that there were no characteristics of the shipments which would distinguish them from locomotive wheels on axles, save for the small hub pressed on the axle as described, and that, therefore, the fourth-class rate of 29 cents per 100 pounds

was legally applicable to the shipment. Defendants reply that shipments of the character described are removed from the classification applicable to car wheels on axles when they are rendered more complete by additional process of manufacture, such as shrinking on housings or hubs, or by the application of any arrangement for gear wheels, and that the second-class rating applicable to machinery should have applied to both shipments.

Western classification provided and provides a first-class rating on machinery, s. u., loose, less than carload. The fourth-class rating was applicable to locomotive wheels on axles, irrespective of the kind or stage of manufacture.

We find that the fourth-class rate was legally applicable and that the shipments were overcharged in the aggregate sum of \$5.79, which sum should be refunded to the proper party, with interest.

Complainant paid the freight charges, but later charged them back to the shipper. It is argued that complainant can rightfully maintain the action for reparation on account of the overcharge or the collection of an unreasonable rate, but we have repeatedly held that the right to reparation is conditioned upon proof that the claimant paid and bore the freight charges as freight charges and was damaged through a violation of the act.

The complaint will be dismissed.

40 I. C. C.

No. 7970.
HAVANA METAL WHEEL COMPANY
v.
CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY
ET AL.

Submitted December 1, 1915. Decided July 6, 1916.

1. Claim for reparation on 20 carloads of lumber shipped from Rome, Miss., to Havana, Ill., found to have been abandoned, and complaint dismissed.
2. Correction of a fourth section departure directed.

M. J. Evans for complainant.

E. A. Smith for Illinois Central Railroad Company and Yazoo & Mississippi Valley Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of wheels and trucks at Havana, Ill. By complaint, filed May 1, 1915, it alleges that the rate of 22 cents per 100 pounds charged by defendants for the transportation of 20 carloads of lumber from Rome, Miss., to Havana during June and July, 1912, was unjust and unreasonable to the extent that it exceeded 20 cents per 100 pounds. Reparation is asked.

The claim was presented to the Commission informally December 26, 1913, and on January 20, 1914, complainant was notified that the claim could not be disposed of informally. Complainant failed to file a formal complaint until May 1, 1915.

The claim was not presented formally within two years after the cause of action accrued, nor within a reasonable time after notice to complainant that it could not be disposed of informally, and must, therefore, be considered to have been abandoned. *Rule 3 of Rules of Practice; Dillon Coal & Transfer Co. v. O. S. L. R. R. Co.*, 28 I. C. C., 91.

The complaint contains no prayer with respect to rates for the future, but the record discloses a situation at variance with the provisions of the fourth section.

The shipments listed in the complaint consisted of hickory axles and moved: Yazoo & Mississippi Valley and Illinois Central Railroads to East St. Louis, Ill.; Chicago, Peoria & St. Louis Railway

to destination. Prior to June 1, 1915, the joint rates from Rome to Havana were the same as those to Peoria, Ill., a point on the Chicago, Peoria & St. Louis Railway to which Havana is directly intermediate. The rates to Peoria were and are 20½ cents per 100 pounds on hickory axles, vehicle wood, in the rough, not further finished than rough sawed, rived, or split from the bolt, and 23½ cents per 100 pounds on hickory axles, vehicle wood, dressed, bent, turned, tenoned, or mortised, in the white, including primed, not further finished. The joint rates to Havana were canceled on the date stated, leaving in effect combination rates of 22½ cents and 25½ cents per 100 pounds based on East St. Louis, which rates were increased September 26, 1915, to the present combination rates of 23 cents and 26 cents. This departure from the long-and-short-haul provision of section 4 is not protected by proper application. Defendants should immediately effect a proper adjustment.

Ar. order dismissing the complaint will be entered.

40 I. C. C.

No. 5508.
LOUISVILLE BOARD OF TRADE
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY.

Submitted May 13, 1914. Decided July 5, 1916.

At Louisville, Ky., the Louisville & Nashville Railroad Company refuses to switch between connecting lines and industries located only on its tracks traffic for which it competes. It switches such traffic between those industries and the Chesapeake & Ohio Railway under a contract with the latter carrier; *Held*:

1. That the proviso in section 3 of the act is intended to protect a carrier's terminals against use by a competing carrier engaged in like business when granting such use would deprive the owning carrier of a road haul which it is prepared to perform, and is not limited to the question of physical entry upon such tracks or facilities of the power, equipment, or employees of another carrier.
2. That the switching for the Chesapeake & Ohio Railway Company and refusal to switch for all other connecting carriers at Louisville is unduly preferential of the former and unduly prejudicial to the latter, their patrons, and their traffic.

Louis B. Wehle for complainant.

Edward S. Jouett for defendant.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

For many years, and certainly since about 1882, the defendant Louisville & Nashville Railroad Company, hereinafter referred to as the L. & N. or as defendant, has denied access over its terminals in Louisville, Ky., to industries there located upon its rails, and upon no other, where such access was sought via connecting carriers in traffic for which it competes. This policy has been made effective by certain provisions carried in its Louisville local switching tariff. When the complaint was filed these provisions, grouped in what is commonly known in this proceeding as rule 17, were as follows:

(a) The Louisville & Nashville Railroad will not switch traffic offered by connecting lines or for delivery to connecting lines at Louisville, Ky., originating at or destined to points on or via the Louisville & Nashville Railroad for which it competes, except as otherwise indicated in paragraph (d).

(c) The Louisville & Nashville Railroad will switch traffic coming from or destined to stations on its St. Louis division and branches, and also traffic originating at or destined to points beyond St. Louis division junctions north

of Evansville, Ind., handled in connection with the Louisville, Henderson & St. Louis Railway into or out of Louisville, Ky., except that it will not switch such traffic as originates at or is destined to points west of Mississippi River, for which it competes via other routes.

(d) The Louisville & Nashville Railroad will switch benzole, benzine, gasoline, liquefied petroleum gas, naphtha, oil gas, petroleum ether, petroleum naphtha, and petroleum spirits, regardless of point of origin or destination.

Before the hearing subdivision (c) was amended so as to apply on carload traffic only, and since the case was submitted subdivision (d) has been canceled.

The Louisville Board of Trade, a chartered association of the state of Kentucky, having as members several hundred manufacturing and mercantile firms and corporations of that city, many of them with private tracks served by defendant, in this complaint attacks rule 17 as a violation of the act to regulate commerce, particularly sections 1 and 3 thereof; alleges that it is highly detrimental to Louisville's commercial prosperity; and prays that it be ordered stricken from defendant's tariff. By amendment it prays the establishment of through routes and joint rates, but joins no additional defendants. All these allegations the defendant denies. It further avers that its Louisville terminal policy is entirely legal.

In brief and upon argument counsel for complainant insists that the only adequate remedy for the situation is a complete abolishment of rule 17, and that the Commission has power to compel that abolishment. The defendant's position is that section 3 stands today, as it has ever since originally enacted in 1887, subject to the proviso that it "shall not be construed as requiring any common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business," and that the later amendments to the act repeal or modify that proviso only in so far as it may be necessary to open terminals as parts of through routes, and to give effect to joint rates prescribed by this Commission. That is to say, this defendant, while always asserting that no necessity for any change has been shown, insists that the only possible lawful requirement to which it could be subjected, in any event, is under the rule outlined by us in *Waverly Oil Works Co. v. P. R. R. Co.*, 28 I. C. C., 621.

Louisville, the metropolis of the state of Kentucky, is situated on the south bank of the Ohio River. In the fifties the nucleus of what is now the L. & N. was built out from Louisville toward the south and east. This was the first and for many years the only railroad line reaching Louisville. The Illinois Central system came in about 1874. The roads from the north had entered the city about 1870, upon completion of the first bridge across the Ohio at that point, although they had reached the north bank in the decade 1850-

1860. The Southern Railway reached Louisville over what are now the tracks of the Kentucky & Indiana Terminal Railroad Company about 1886 and by another route in 1888. To-day the city is served by 12 common-carrier railroads, as follows: Louisville & Nashville Railroad Company; Illinois Central Railroad Company; Southern Railway Company; Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company (Pennsylvania system); Cleveland, Cincinnati, Chicago & St. Louis Railway Company (New York Central system); Baltimore & Ohio Southwestern Railroad Company (Baltimore & Ohio system); Chicago, Indianapolis & Louisville Railway Company (Monon route); Chesapeake & Ohio Railway Company; Louisville, Henderson & St. Louis Railway Company; Kentucky & Indiana Terminal Railroad Company; Louisville & Jeffersonville Bridge Company; and Pennsylvania Terminal Railway Company.

The three last named are Louisville terminal lines. The Kentucky & Indiana Terminal Railroad Company is owned by the Southern, the Baltimore & Ohio Southwestern, and the Monon; the Louisville & Jeffersonville Bridge Company by the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, two-thirds, and the Chesapeake & Ohio, one-third; and the Pennsylvania Terminal Railway Company is controlled by the Pennsylvania lines. These three terminal lines constitute either all or a large part of the terminal facilities of the carriers which control them.

The defendant, by reason of its early location and the many years which intervened before the entrance into Louisville of other rail carriers, has long been firmly established in the best commercial and industrial sections of the city.

The purpose of rule 17 is to assure to defendant its maximum road haul on traffic for which it competes destined to or from industries located exclusively upon its rails. The wording of the rule deserves attention. The prohibition, it will be observed, runs only against traffic "for which it competes." Considerable misunderstanding has existed as to just where the line is drawn, and there would have been a clearer atmosphere in the traffic circles of Louisville had shippers and competing carriers always known what appears to have been made a matter of general knowledge only a few months before the hearing in this proceeding, viz, that the prohibition as construed by defendant applies only when it competes upon rates which are the same as, or lower than, those of its competitors, and which offer to the patron all privileges and facilities afforded by the rates of its competitors. Louisville houses located only upon defendant's rails would then have been spared the irritation and difficulties resulting from the belief that the rate was maintained to compel them to buy and market their goods in defendant's territory.

Rule 17 has accomplished the aim sought. Defendant has refused to switch traffic at Louisville for which it competed, unless compensated by the same revenue as it would have received for its longest possible line haul, except that occasionally it accepted, as compensation for switching, its local rate applicable to a line haul of 10 miles.

This switching rule touches only the competitive carload traffic of industries which have private sidetracks connecting with defendant's terminals and with no other. The traffic of industries having sidetrack connection also with other rail carriers in Louisville is not affected, nor is that handled through public freight warehouses, or on team tracks, whether of defendant or of its competitors.

The following table shows the number of Louisville industries connected by private sidetrack with one railroad only, and the number connected in that way with each rail carrier serving the city:

Road.	Number of industries located on sidetracks connecting only with—		
	Louisville & Nashville.	Other line-haul carriers.	Terminal lines.
Louisville & Nashville.....	158	.....	.....
Illinois Central.....	28	.....
Southern.....	8	.....
Pittsburgh, Cincinnati, Chicago & St. Louis.....	0	.....
Cleveland, Cincinnati, Chicago & St. Louis.....	0	.....
Baltimore & Ohio Southwestern.....	1	.....
Monon.....	2	.....
Chesapeake & Ohio.....	0	.....
Louisville, Henderson & St. Louis.....	0	.....
Kentucky & Indiana Terminal ¹	65
Louisville & Jeffersonville Bridge ²	3
Pennsylvania Terminal Co. ³	49
Totals, 314.....	158	39	117

¹ Controlled by, and furnishes terminal facilities for, the Southern, Baltimore & Ohio Southwestern, and Monon.

² Controlled by, and furnishes terminal facilities for, the Cleveland, Cincinnati, Chicago & St. Louis and the Chesapeake & Ohio.

³ Controlled by, and furnishes terminal facilities for, the Pennsylvania lines.

For brevity the industries so located will be termed "one-line industries." The four line-haul carriers thus shown to be without one-line industries own no rails in the city. Three of them have a controlling interest, either joint or sole, in some one of the terminal lines, and the latter have on their tracks 117 one-line industries. Every one of these 117 industries is open to every railroad in Louisville for all kinds of traffic, whether competitive or noncompetitive in its effect upon the interests of the controlling line-haul carriers. So also, the one-line industries on the other line-haul carriers are open to defendant, except those on the Illinois Central, which, as a retaliatory measure, refuses to open its one-line industries to defendant. But, with these exceptions, access to every one-line in-

dustry in the city of Louisville is open to defendant on even terms with other carriers on all traffic, whereas access to the 158 one-line industries on the defendant's tracks is, to the extent of the terms of rule 17, closed to every other Louisville carrier on traffic for which defendant competes.

The defendant urges that since the three terminal railroads conduct a strictly terminal transfer business, have no line haul to protect, and are under charter obligations to switch all traffic offered to them, they should be disregarded in any consideration of the element of reciprocity in the Louisville terminal situation. It does not definitely appear in all three instances that charter obligations dictate their policy, but, even so, we think defendant's position is not well taken, and certainly not fairly taken. Through their investment in and operation of these terminal companies the line-haul competitors of the defendant give it access to 117 industries otherwise beyond its reach.

Reciprocity implies a dealing on equal footing. This would result were the one-line industries of Louisville open to all rail carriers under a policy of general interchange. Thereby the defendant would open 158 one-line industries and in return would have 156 such industries open to it.

It is also urged by defendant that if traffic interchanged, rather than industries opened, be made the measure of reciprocity, the lack of mutual advantage in a wide-open policy will more clearly appear. The record is not sufficiently complete to afford a thorough traffic test, but does show the carload movement in and out of Louisville during two months on the basis of which the following figures are computed for a year's operation, in carloads:

	Number of carloads.
To and from all L. & N. one-line industries.....	98, 562
Line haul via L. & N.....	56, 316
Line haul via other lines.....	42, 246
Competitive traffic	19, 230

Because of the switching rule, these 19,230 cars must be included in the total of 56,316 whereon defendant secured the line haul, and for the same reason there can be no competitive business included in the 42,246 carloads whereon the other carriers secured the line haul.

As has been said, the competitive traffic to and from one-line Louisville industries is all that is involved here. The table estimate shows that the defendant controls 19,230 carloads of this traffic annually. It does not appear how much such competitive traffic originates or terminates on the lines of the 11 other roads at Louisville. There

are eight other line-haul carriers serving Louisville, and the Illinois Central, as we have said, gives up no competitive traffic to defendant. We are unable to say that the traffic test shows an utter or even a substantial lack of reciprocity.

In past years the defendant has given up nothing; it has received from those to whom it refuses to give almost 20 per cent of the entire competitive traffic. The plea of this defendant, therefore, that opening the doors to its one-line industries will result in lack of reciprocity for the future is not impressive.

The Pennsylvania, New York Central, and Baltimore & Ohio systems each operate routes between Louisville and points east of Cincinnati, Ohio. Between Louisville and the same points each operates a joint route in connection with the defendant's short line from Louisville to Cincinnati, and the rates by the two-line joint routes are usually the same as the rates by the system routes. Under such circumstances these three systems solicit business to and from industries located exclusively on defendant's terminal in Louisville, for movement via Cincinnati, the defendant thus getting the haul between that point and Louisville, and the other carriers the haul beyond.

To offset rule 17 the competitors of defendant have for many years and at their own expense drayed competitive shipments, or made allowances for such drayage, between their rails and plants located only on defendant's rails, and thus it is said that rule 17 costs the shipper nothing in rates. But this is far from overcoming the difficulties in which certain shippers find themselves because of the rule. There are plants served only by defendant so located as in some cases to make drayage commercially inconvenient and in other cases physically impossible.

There is another aspect of this drayage allowance. Industries located only on defendant's rails by routing over a competitor of that line can have shipments drayed at the expense of the competitor and laid down at any point desired within their plants. This is of advantage where unloading or storage is preferred at a point within the confines of the plant but far removed from the siding connected with defendant, and it is of record that shippers purposely invoke the operation of the rule to secure this advantage. At times the drayage allowance yields a profit over cost to the shipper. The result is a discrimination in favor of shippers located only on defendant's line, accorded by its competitors.

Much difficulty has arisen because of the operation of the rule in connection with shipments taking transit service en route to or from Louisville. A lumber mill at Memphis, Tenn., uses logs brought in over the Illinois Central. Under the transit tariff of that carrier the Memphis mill is entitled to a revision of charges paid on the logs

inbound when shipment of the lumber product outbound is via the Illinois Central. Defendant and the Illinois Central compete between Memphis and Louisville. When the Memphis mill under this Illinois Central transit provision seeks to sell its product to a Louisville customer whose siding is connected only with defendant's line, it is found that the transit rules of the one carrier and the switching rules of the other conflict. Many southern lumber mills are similarly situated and affected. A like difficulty exists in connection with transit provisions as to other commodities.

The only stockyards in Louisville, the Bourbon Stock Yards, have no rail connection except with defendant. The greater part of the business of these yards is with Chicago, Ill., a point which defendant regards as noncompetitive, under its switching policy, and shipments for which it freely switches. There is also a substantial movement through Cincinnati, Ohio, in part to Detroit, Mich., and to Cleveland, Ohio. These are considered competitive points. The record shows dissatisfaction with the service by defendant through Cincinnati to those two competitive points.

Defendant's bills of lading and live-stock contracts are used in connection with shipments of live stock from the Bourbon yards. To points east of Cincinnati, stock shipments may be routed from Louisville by the Pennsylvania, the New York Central, or the Baltimore & Ohio systems. When this case was heard these three carriers in their live-stock bills of lading and contracts fixed a higher released value per head of hogs than did the defendant in its bills of lading. But as rule 17 practically compels the shipper to use the rails of defendant out of the Bourbon yards the shipper was likewise practically compelled to accept less protection in case of loss of or damage to shipments of hogs moving to points on the Pennsylvania, New York Central, and Baltimore & Ohio systems, or beyond, than he would have secured at the same rate had the stock moved from Louisville via the lines of those systems direct. This appears to be a situation in which the wording of rule 17, as explained of record, would permit the defendant to switch the traffic to its competitor, but its practice has always been at variance with the rule as thus explained. Since this case was submitted the defendant has amended its contracts and bills of lading governing live-stock shipments to meet the provisions of its competitors.

The Chesapeake & Ohio Railway Company owns a line of railroad which extends from eastern points to Lexington, Ky., 84 miles east of Louisville. Between Lexington and Louisville it operates over rails owned by defendant under trackage agreement dated March 23, 1895. Section 1 of that agreement gives to the Chesapeake & Ohio—the right to use jointly with the first party (Louisville & Nashville) its line of railway * * * from Louisville, through Shelbyville and Frank-

fort * * * to a connection * * * in Lexington, Ky., including the use of the sidings and switches, water stations, real estate, and all other property incident and necessary to the use of the same for the purpose of running passenger and freight trains * * * from and to Louisville, * * * but nothing herein contained shall be construed to give the second parties (Chesapeake & Ohio) any right to use the terminal buildings, shops, structures, and sidetracks of the first party (Louisville & Nashville) in the cities of Louisville or Lexington.

For this road trackage right the agreement provides that certain compensation shall be paid to defendant, and then, in section 11—

It is further agreed, by and between the parties hereto, that they will switch for each other over their tracks in Lexington, Ky., Louisville, Ky., Newport, Ky., and Covington, Ky., to and from private industries such cars as the other party may desire, making for the same a reasonable charge, said charge to be in no case greater than either of the parties may at the same time be charging for performing similar services for other friendly connections.

Pursuant to this agreement traffic for which both carriers compete is and for many years has been switched by defendant with its own motive power and crews for the Chesapeake & Ohio to and from industries located only on defendant's rails. No rates or charges for this switching are carried in tariffs filed by defendant with this Commission. So far as appears in the record the defendant's charges therefor are those which it contemporaneously maintains for the switching of noncompetitive traffic for the Chesapeake & Ohio.

It is said for defendant on brief that the Chesapeake & Ohio required access to the terminal tracks of defendant as a natural incident to the trackage agreement, but that to avoid danger and inconvenience it was agreed that defendant should do the switching with its own locomotives.

Section 11 of the contract stands separate and apart from the preceding sections in which the road trackage right is granted and the consideration therefor is fixed. Nothing links it with the other sections of the agreement except the fact that it is in the same document. It is worthy of notice that the compensation to be charged by defendant is the same as it charges for "similar services for other friendly connections." Compensation on a tariff rate or charge basis better befits an arrangement for interchange of service than one for physical use. As we read the agreement, section 11 is a separate and distinct arrangement which opens the industrial sidetracks of each road to the other through interchange of service in the cities named, those tracks being excepted by earlier sections from the operation of the road trackage agreement.

The practice of the Chesapeake & Ohio with reference to the charge made by defendant for this switching leaves no doubt that it is an ordinary agreement for interchange of service, and not one for physical use of terminals. Were the latter the case, the terminals would in effect be Chesapeake & Ohio terminals, and custom and usage would require that the Chesapeake & Ohio apply its rates to and from Louisville to all industries on these terminals. *Car Spotting Charges*, 34 I. C. C., 609, at 616. That carrier does nothing of the sort. Instead, it applies the Louisville rate on competitive business, absorbing the defendant's switching charge out of its Louisville rate, but on noncompetitive business it refuses to absorb, and the shipper pays the switching charge in addition to the rate for the line haul to or from Louisville. Such a practice is consistent, and only consistent, with the view that the case is one of ordinary interchange of service with a connecting carrier.

In recent years the defendant has endeavored by appropriate tariff publication to withdraw gradually from participation in other than strictly local transportation of certain volatile and highly inflammable oils. This policy, it seems, was due to severe losses sustained in handling such traffic, and its withdrawal had become practically complete when this proceeding began. Under these circumstances, and having no competitive rates for the line haul of such oils, it regarded such transportation as traffic for which it did not compete and freely switched the same in Louisville. By so doing it was relieved of the danger deemed to be incident to the transportation of these oils except for the comparatively short time occupied in the switching. This is the reason disclosed of record for its policy as to the haulage of these oils. As has been seen, the provision for switching oils regardless of points of origin or of destination has been canceled.

Among the thousands of cars switched by defendant in Louisville there occasionally "slipped through" a really competitive carload handled on switching rates. But there is nothing of record which indicates that defendant knowingly and willingly departed from its long standing policy. The occasional nonenforcement of the tariff rule would seem to be rather due to the mistakes of its employees or the manipulations of its patrons.

This record leaves no doubt that the rule results in annoyance, inconvenience, and financial loss to some patrons of defendant, and delay to their traffic. Some shippers and consignees express satisfaction with the rule and the practices of defendant under it, and, generally speaking, the defendant's transportation service is recognized as excellent throughout its entire territory.

Much importance is attached by defendant on brief to its showing that if the industries located only on its rails, with their competitive traffic of 19,230 carloads annually, should be thrown open, the resulting loss to it annually would be:

	Car-loads.	Revenue
On inbound traffic.....	5,304	\$219,630
On outbound traffic.....	2,586	92,490
Total.....	7,890	312,120

This estimate is based on elaborate computations by one of defendant's high traffic officials, who relies upon his extensive experience in arriving at the measure of success which would reward the traffic solicitors of competitors. It does not appear what allowance is made for the highly satisfactory character of defendant's common-carrier service. But if the law requires that these terminals be opened no showing of prospective loss can deter an order to that effect.

The defendant admits on brief that terminals and transportation thereon are all within the act to regulate commerce and subject to the regulating power of this Commission, but says that our power is limited by the whole act, and particularly by the closing clause of section 3, and by that portion of section 15 which deals with the establishment of through routes and joint rates.

This brings us to a consideration of the all-important question in this case. We have indicated doubt as to the wisdom of the policy pursued by defendant under and through rule 17, but regardless of what doubts as to the wisdom of that policy may be entertained by us or by the complainant, the case must turn upon the question of whether or not defendant is acting within its legal rights.

The proviso in section 3 of the act, that it "shall not be construed as requiring any common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business," has been the subject of much discussion and widely differing views, which differences of view, as will appear, exist among the members of this Commission. What might be termed angles of this question have been considered and passed upon in various cases. The *Pekin Union Switching Case*, 26 I. C. C., 226; the *Waverly Oil Works Case*, *supra*; *City of Nashville v. L. & N. R. R. Co.*, 33 I. C. C., 76; *B., R. & P. Ry Co. v. P. Co.*, 29 I. C. C., 114; *Pennsylvania Company v. U. S.*, 236 U. S., 351; *Grand Trunk Ry. Co. v. Michigan Railroad Commission*, 231 U. S., 457; and *Louisville & Nashville R. R. Co. v. Central Stock Yards Co.*, 212 U. S., 132.

Both the *New Castle Switching Case* and the *Nashville Switching Case* were essentially discrimination cases.

In *Missouri & Illinois Coal Co. v. I. C. R. R. Co.*, 22 I. C. C., 39, we said, p. 46:

Our railroads are called upon to so unite themselves that they will constitute one national system; they must establish through routes, keep these routes open and in operation, furnish the necessary facilities for transportation, make reasonable and proper rules of practice as between themselves and the shippers, and as between each other.

This expression, while meaning all it says, was not intended to lay upon the carriers any greater obligations than are laid upon them by the law.

In the *Waverly Oil Works Case* we reaffirmed the statement made in the *Pekin Union Switching Case*, p. 628:

There is nothing sacred about the terminals of a railroad. They are available to the public and may be regulated by the public in exactly the same way that any other part of a railroad can be.

It is to be noted, however, that the regulation of railroads by federal authority is under the provisions of the act to regulate commerce, and that act places certain limitations upon the exercise of the regulatory powers conferred by it.

Section 1 declares it to be the duty of carriers subject to the act to establish through routes. Section 15 authorizes the Commission to require the establishment of through routes, but provides that a carrier shall not be required to embrace in such through route substantially less than the entire length of its line, or that of any subsidiary or controlled line, lying between the termini of such through route, unless that is necessary in order to avoid an unreasonably long route. This is a recognition of the carrier's right to utilize to its own interest the entire road haul that it can perform, so long as it does not result in an unreasonable route.

So also in the proviso of section 3 a limitation is placed upon the regulatory power that is delegated to the Commission. But, unlike the limitation in section 15, this one is not coupled with any consideration of unreasonableness. Full power has been provided to establish through routes and joint rates, and under such routes and rates all reasonable demands for service from any point on one carrier's line to any point on another carrier's line may be met. *Waverly Oil Works Case, supra*. The proviso in section 3 protects the carrier that has secured and built up valuable terminals, without which its railroad would be of little use, against having those terminals utilized by a competing carrier that has not provided itself with adequate terminals and that desires to thus secure the line haul which the carrier owning the terminals is prepared to perform and which the

other carrier can not secure unless it can have the use of the terminals of its competitor.

We think that the most direct decision or statement bearing on this question that has been made by the Supreme Court of the United States is that in *Louisville & Nashville R. R. Co. v. Central Stock Yards Co.*, *supra*, where, at page 144, it is said:

There remains for consideration only the third division of the judgment, which requires the plaintiff in error to receive at the connecting point, and to switch, transport, and deliver all live stock consigned from the Central Stock Yards to any one at the Bourbon Stock Yards. This also is based upon the sections of the constitution that have been quoted. If the principle is sound, every road into Louisville, by making a physical connection with the Louisville & Nashville, can get the use of its costly terminals and make it do the switching necessary to that end, upon simply paying for the service of carriage. The duty of a carrier to accept goods tendered at its station does not extend to the acceptance of cars offered to it at an arbitrary point near its terminus by a competing road, for the purpose of reaching and using its terminal station. To require such an acceptance from a railroad is to take its property in a very effective sense, and can not be justified, unless the railroad holds that property subject to greater liabilities than those incident to its calling alone.

This decision, rendered after the proviso in section 3 was enacted, and in connection with which the provisions of section 1 as to what facilities are included in the terms "railroad" and "transportation" were considered, seems to us to clearly indicate the proper interpretation of the proviso in section 3. "The use" of tracks or terminal facilities referred to in that proviso is not limited to physical entry upon such tracks or terminal facilities by the power, equipment, or employees of another carrier. We think that significance is to be attached to the words "engaged in like business" and that they may fairly be interpreted to mean "competing for the same traffic." We can not believe that the law was intended to mean that a competing rail line may now be built between important commercial centers served by a railroad long established and possessing adequate and valuable terminals at both points, and "by making a physical connection" "at an arbitrary point near its terminus" be accorded the right of access to those terminals for originating and delivering freight hauled by it and which the carrier owning the terminals is not only prepared but anxious to carry at rates and under rules and regulations that are subject to all of the requirements and restrictions of the act.

The defendant is regularly switching at Louisville both competitive and noncompetitive traffic, inbound or outbound, to or from industries on its terminals, for the Chesapeake & Ohio, and refuses to switch competitive traffic for all other connecting rail carriers at Louisville. It is our conclusion and finding that its practice in this regard is unduly prejudicial and disadvantageous to such other

connecting carriers, to shippers and consignees patronizing their routes to and from Louisville, and to the traffic of such patrons, and an undue preference in favor of the Chesapeake & Ohio Railway Company, shippers and consignees over that route, and their traffic. *B., R. & P. Ry. Co. v. P. Co., supra; Pennsylvania Co. v. U. S., supra.*

An order will be entered requiring defendant to remove this undue prejudice and preference.

MEYER, *Chairman*, dissents because of the inadequacy of the relief granted by the majority.

HALL, *Commissioner*, dissenting:

While I agree to the ultimate disposition of this complaint on the issue of unjust discrimination, I am unable to concur in the views of the majority report throughout.

In the many cases involving "closed terminals" the *Central Stock Yards Case*, 212 U. S., 132, has been cited more frequently perhaps than any other, and the language quoted therefrom in the majority report herein has long been relied upon to justify a "closed terminal" policy.

In that case it appeared that the Southern Railway had, by agreement with the Central Stock Yards, made the latter its public live-stock depot in Louisville; the Louisville & Nashville Railroad had in similar manner made the Bourbon Stock Yards its live-stock depot in the same city. The Louisville & Nashville appealed from an order of the Kentucky courts interpreting the Kentucky constitution, and requiring it (1) to receive at its station in Kentucky, and "to bill, transport, transfer, switch, and deliver in the customary way," at some point of physical connection with the tracks of the Southern Railway, and particularly at one described, all live stock or other freight consigned to the Central Stock Yards or to persons doing business there. (2) Further, to transfer, switch, and deliver to the Southern Railway at the said point of connection "any and all live stock or other freight coming over its lines in Kentucky consigned" to the Central Stock Yards or persons doing business there. (3) Further, to receive at the same point and to "transfer, switch, transport, and deliver all live stock" consigned to anyone at the Bourbon Stock Yards, "the shipment of which originates at the Central Stock Yards," with proviso requiring pay or tender of proper charges for its services, whenever demanded, at the time such live stock or other freight is offered. (4) Finally the railroad company was required, whenever requested by the consignor, consignee, or owner of the stock, "at any of the stations, and particularly at its break-up yards in South Louisville, Ky.," to recognize their right to change the destination, and, upon payment of the full Louisville freight rate and proper presentation of the

bill of lading duly indorsed, the railroad was required to change the destination and deliver at a point of connection with the Southern Railway tracks for delivery by the latter to the Central Stock Yards.

The Supreme Court did not consider requirements 2 and 4 on their merits. They were held void as an attempt to regulate interstate commerce. Requirement 1 fell because the law upon which it was founded failed to provide full and adequate protection from the loss or undue detention of the cars and due compensation for their use. In neither of these was there anything analogous to the case here before us. They merely demanded that the Louisville & Nashville should use its competitor's public live-stock depot in Louisville for live-stock shipments brought into that city over Louisville & Nashville rails.

The third requirement of the Kentucky courts, though somewhat in point here, is more analogous to the question which was raised subsequently in the *Grand Trunk-Detroit Case*, 231 U. S., 457. The question there was whether the Grand Trunk could be compelled to use the tracks it owns and operates in Detroit for the interchange of traffic; or, more specifically, whether it must receive cars from another carrier at a junction point or physical connection with such carriers in Detroit, for transportation to its team tracks; and whether it must allow the use of its team tracks for cars to be hauled from such tracks to a junction point or physical connection with another carrier within Detroit city limits and be required to haul such cars in either of the above-named movements or between industrial sidings. The case was decided adversely to the carrier by a unanimous court. 231 U. S., 464. The long honored paragraph of the latter case was relied on by the Grand Trunk in its *Detroit Case*, and in discussing requirement 3 the court said in the *Grand Trunk-Detroit Case*, pp. 471, 472:

It will be observed that the beginning of traffic was at the Central Stock Yards, the stockyards of the Southern, and was to be hauled by that road to its connection with the Louisville & Nashville, and by the latter from that point to the Bourbon Stock Yards, the stock depot of the latter railroad. The yards were the terminals of the respective roads for live-stock delivery, and the case turned upon the point that the roads were competitive, and that the point of delivery was an arbitrary one, and that thereby the terminal station of one company was required to be shared with the other company.

In the face of that language and that decision I find myself utterly unable to accept the *Central Stock Yards Case* as controlling here.

But this same subject has recently received further consideration by the Supreme Court in the *Newcastle Switching Case*, 236 U. S., 351, and the *Nashville Switching Case*, 238 U. S., 1. These two cases are dismissed in the majority report herein with the comment that they "were essentially discrimination cases." However that may be, the

fact remains that in attacking this Commission's orders the defendants in both those cases relied upon the closing clause of section 3 of the act to regulate commerce and the decision of the Supreme Court in the *Central Stock Yards Case*. See 236 U. S., 351, at 364 and 369; 238 U. S., 1, at 18 and 4.

Answering those contentions the court said in the *Newcastle Switching Case*, and with particular reference to the *Central Stock Yards Case* and the *Grand Trunk-Detroit Case*, 236 U. S., 351, at 368-369 and 371-372:

In the present case we think there is no requirement in the order of the Commission amounting to a compulsory taking of the use of the terminals of the Pennsylvania Company by another road, within the inhibition of this clause of section 3. The order gives the Rochester road no right to run its cars over the terminals of the Pennsylvania Company or to use or occupy its stations or depots for purposes of its own. There is no requirement that the Rochester Company be permitted to store its cars in the yards of the Pennsylvania Company or to make use of its freight houses or other facilities; but simply that the Pennsylvania Company receive and transport the cars of the Rochester Company over its terminals at New Castle in the same manner and with the same facilities that it affords to other railroads connecting with the Pennsylvania Railroad at the same point.

* * * * *

So here there is no attempt to appropriate the terminals of the Pennsylvania Company to the use of the Rochester Company. What is here accomplished is only that the same transportation facilities which are afforded to the shipments brought to the point of connection over tracks used in common by the Baltimore & Ohio Railroad and Rochester Company shall be rendered to the Rochester Company as are given to the Baltimore & Ohio Company under precisely the same circumstances of connection for the transportation of interstate traffic. All that the Commission ordered was that the company desist from the discriminatory practice here involved, and in so doing we think it exceeded neither its statutory authority nor any constitutional limitation, and that the district court was right in so determining.

In the *Nashville Switching Case* the Supreme Court's answer was in this language, 238 U. S., 1, at 18 and 19-20:

Neither did it order the appellants to give the use of their terminals to the Tennessee Central, but only required them to render to the latter the same service that each of the appellants furnishes the other in switching cars to industries located in and near the yard.

* * * * *

We think it clear that this order does not require the petitioners to give the use of their tracks and terminal facilities to the Tennessee Central Railroad, within the meaning of the proviso contained in section 3 of the act to regulate commerce, or constitute an appropriation of such tracks and terminals for the use of the Tennessee Central Railroad.

These more recent cases to my mind unequivocally say that the word "use," in the closing clause of section 3, means only *physical use* of one carrier's tracks or terminal facilities by the power, equipment,

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or employees of another carrier and does not embrace mere interchange switching. And this is the view taken, it seems to me, in the *Second Nashville Switching Case*, 33 I. C. C., 76, at 89; 227 Fed., 258, at 271.

In this connection it seems significant that the closing clause of section 3 refers to the use of *tracks* as well as terminals. Time was when common-carrier railroads exercised without restriction their common-law right to enter or refrain from entering into through routes and joint rates. *Southern Pacific Co. v. Interstate Commerce Commission*, 200 U. S., 536. Then came the amendments to section 15 in 1906 and 1910, and thereafter, within certain limitations, carriers have been compelled to open up their lines as a part of through routes under joint rates ordered by this Commission. But I am not aware that it has ever been contended that an order establishing a through route in effect gave to one carrier the use of the tracks of another. And of course this Commission would never attempt to prescribe a through route by compelling a grant of trackage rights. That would be a use within the meaning of the statutory shield of section 3, whereas in becoming a part of a through route a carrier merely performs an ordinary service of transportation.

So, also, terminal switching is a transportation service. The Louisville & Nashville is engaged in such transportation service at Louisville. For such service it is entitled to just and reasonable compensation, and in the performance of that service it is entitled to all its legal rights. One of these is guaranteed it by the "short hauling" limitations of section 15 upon our power to compel the establishment of through routes, but it appears to me that there is some ambiguity in that limitation. It seems obvious that cases must arise where some carrier must suffer short hauling. Which shall it be?

To remove the ambiguity and ascertain the real intent of the statute, its history may be examined. *Holy Trinity Church v. United States*, 143 U. S., 457. This limitation is part of the amendments of June 18, 1910, to the act. It is found in the same wording in section 9 of Senate bill 6737, introduced by Senator Elkins on February 25, 1910, referred to the Senate Committee on Interstate Commerce, and reported back on the same day without amendment. On March 21, 1910, Senator Elkins, in discussing this limitation, said:

The second exception to the grant of this power is one which has always been recognized in the transportation business of the country. The road that initiates the freight and starts it on its movement in interstate commerce should not be required, where it is a line not unreasonably long, to transfer its business from its own road to that of a competitor especially when the commerce initiated by it can be as promptly and safely transported from the point of shipment to the point of destination by its road as by the line of its competitor. *Congressional Record—Senate*, March 21, 1910, pp. 3475-3476.

It seems entirely clear that whatever rights are secured to the carriers by this limitation inhere in them as originating lines only and not as delivering lines.

The act in its entirety, as I read it, provides that this defendant may be compelled, in proper case, under section 1, to open its terminals in Louisville for all interstate commerce as to which it is the delivering carrier, even in the absence of any unjust discrimination.

I am authorized to say that COMMISSIONER McCHORD concurs in this dissent.



No. 8037.

J. U. WICKER ET AL.

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
ET AL.



Submitted December 11, 1915. Decided June 29, 1916.



Charges collected for the transportation of various carload shipments of live stock from New Albany, Miss., to East St. Louis, Ill., found to have been unreasonable and unjustly discriminatory. Reparation awarded.

C. Lee Crum for complainants.

Thomas Bond for St. Louis & San Francisco Railroad Company and others.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are individuals and firms engaged in the live-stock business at New Albany, Miss. By complaint, filed May 13, 1915, they attack as unreasonable and unjustly discriminatory the rate of \$80 per car maintained by the defendants prior to February 27, 1915, and the rate of \$59 per car since maintained, on cattle, from New Albany to East St. Louis, Ill. A rate of \$50 per car is asked and reparation on shipments delivered within two years prior to the filing of the complaint.

New Albany is on the St. Louis & San Francisco Railroad, hereinafter called the Frisco, 34 miles southeast of Holly Springs, Miss., and 26 miles northwest of Tupelo, Miss. It is also served by the New Orleans, Mobile & Chicago Railroad, not a party to this proceeding.

Prior to February 27, 1915, a rate of \$80 per car applied on cattle from New Albany to East St. Louis by way of the Frisco direct, 387 miles; or the Frisco to Tupelo and the Mobile & Ohio Railroad beyond, 401 miles; or the Frisco to Holly Springs and the Illinois Central Railroad beyond, 360 miles. Since February 27, 1915, a rate of \$59 per car 36 feet 6 inches or under, subject to rule 24 of southern classification governing minimum weights, has applied over the routes named. The Frisco absorbs bridge tolls of 2 cents per 100 pounds, minimum \$5 per car, at Memphis, Tenn., and \$4 per car at East St. Louis on shipments moving over its direct line. A bridge toll of 2 cents per 100 pounds is absorbed by the carriers on shipments moving over the other routes named.

Complainants made numerous shipments prior to the date on which the rate was reduced, most of which moved over the route through Tupelo, although one or two shipments apparently moved over the Frisco direct. Charges were collected on some of the shipments at the legal rate and on others at a rate of \$81 per car.

A rate of \$64 per car has been in effect for several years on cattle to East St. Louis, from Cotton Plant, Blue Mountain, Mitchell, Ingo-mar, and other Mississippi points on the New Orleans, Mobile & Chicago Railroad in the vicinity of New Albany. This rate was and is applicable through New Albany in connection with defendants' lines. Complainants buy cattle in the territory surrounding New Albany, in competition with buyers located at the points named. East St. Louis is the ultimate market for most of the cattle shipped from this territory, and prior to the reduction of the rate from New Albany complainants were at a real disadvantage.

A witness for the Frisco explained that the rate from points on the New Orleans, Mobile & Chicago Railroad was made \$5 per car over the rate of \$59 per car which the Mobile & Ohio Railroad has maintained for several years from Tupelo to East St. Louis, and that it was established to meet cross-country competition, as cattle dealers located in the territory between the Mobile & Ohio and the New Orleans, Mobile & Chicago railroads could ship over either line. The Frisco insists that the former rate was reasonable; that the present rate is unreasonably low and was voluntarily established solely to meet the rates in effect from Tupelo and points on the New Orleans, Mobile & Chicago Railroad. Exhibits introduced contrast the rates assailed with rates on cattle ranging from \$40 to \$65 per car for distances ranging from 246 miles to 434 miles, maintained by the Louisville & Nashville, the Mobile & Ohio, and the Illinois Central railroads from points on their lines in Mississippi and Tennessee to East St. Louis. The present rate from New Albany compares favorably with the rates with which it is compared and is not

shown to be unreasonable. The former rate of \$80 per car on the other hand was clearly excessive and out of line.

We find that the rate of \$80 per car assailed was unreasonable and unjustly discriminatory to the extent that it exceeded the present rate of \$59 per car 36 feet 6 inches or under in length, subject to rule 24 of southern classification; that complainants made shipments as described, and paid and bore charges thereon at the rate herein found to have been unreasonable; that they were damaged to the extent that the charges collected exceeded the charges that would have accrued on basis of the rate herein found reasonable; and that they are entitled to reparation with interest. The amount of reparation due can not be determined on this record, and complainants should prepare a statement showing as to each shipment on which reparation is claimed the date of movement, weight, route of movement, the initials, numbers, and sizes of the cars used, rate charged, amount of freight paid, and the amount of reparation due under our findings herein, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared by complainants and verified by defendants we will consider the entry of an order awarding reparation. As the rate found reasonable has been in effect since February 27, 1915, no order for the future is necessary.

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No. 6340.
MOUNT PLEASANT FERTILIZER COMPANY
v.
NEW ORLEANS & NORTHEASTERN RAILROAD COMPANY
ET AL.

Submitted December 8, 1914. Decided July 13, 1916.

Former report and order modified.

M. P. Callaway for New Orleans & Northeastern Railroad Company and Alabama Great Southern Railroad Company.

Edw. D. Mohr for Louisville & Nashville Railroad Company.

SUPPLEMENTAL REPORT OF THE COMMISSION.

BY THE COMMISSION :

Upon consideration of the petition, filed by the Louisville & Nashville Railroad, Alabama Great Southern Railroad, and New Orleans & Northeastern Railroad, for modification of our report and order entered herein on March 31, 1916, and upon further consideration of the record, we find and conclude that the rate on fertilizer from Mount Pleasant, Tenn., to Purvis, Richburg, and Petal, Miss., was and is unreasonable by the lines of petitioners to the extent that it exceeded and exceeds the rate contemporaneously applicable on this traffic from Mount Pleasant to Hattiesburg and Lumberton, Miss. So much of our original report and order as conflicts with this conclusion is hereby rescinded and vacated. An order will be entered in accordance with the conclusions herein announced.

INVESTIGATION AND SUSPENSION DOCKET No. 725.¹

NEW ENGLAND MILK CASE.

No. 8558.

MILK AND CREAM INVESTIGATION.

Submitted May 6, 1916. Decided July 11, 1916.

1. Proposed increased rates by certain carriers in New England on milk, cream, evaporated milk, condensed milk, skim milk, buttermilk, and pot cheese in carloads and less than carloads found not to have been justified.
2. Rates, regulations, and practices of New England carriers with respect to the interstate transportation of milk, cream, condensed milk, evaporated milk, skim milk, buttermilk, and pot cheese in carloads, under what is known as the New England or leased-car system, found to be unlawful.
3. A scale of rates on a per can basis prescribed for the future between points in New England for the interstate transportation of the above commodities in less than carloads in passenger, milk, and mixed passenger and freight train service.
4. Lower rates prescribed for transportation in freight cars in freight trains.
5. Rates prescribed for carload shipments from one consignor to one consignee from one point of origin to one destination.

Charles S. Pierce and *W. A. Cole* for Boston & Maine Railroad; and St. Johnsbury & Lake Champlain Railroad Company; and Canadian Pacific Railway Company.

Seth M. Carter and *Charles H. Blatchford* for Maine Central Railroad Company.

E. W. Lawrence for Rutland Railroad Company.

F. A. Farnham for New York, New Haven & Hartford Railroad Company.

John E. MacLean for Delaware & Hudson Company.

Charles F. Black and *J. W. Hanley* for Central Vermont Railway Company.

R. Van Ummersen for Boston & Albany Railroad Company.

C. D. Waters for Montpelier & Wells River Railroad Company.

Whipple, Sears & Ogden; Greenleaf K. Bartlett; and M. Carter Hall for H. P. Hood & Sons and Turner Centre Dairying Association.

John F. Cusick for Elm Farm Milk Company, D. Whiting & Sons, C. Brigham & Company, Newport Milk Company, Rockingham Milk Company, and Childs Brothers.

¹ The proceeding also embraces complaints in No. 3680, *Albree v. Boston & Maine Railroad et al.*, and No. 7788, *Ida S. Graustein v. Boston & Maine Railroad et al.*

William A. Graustein for *Ida S. Graustein*.

Henry C. Attwill, attorney general, and *Arthur E. Seagrave*, assistant attorney general, for commonwealth of Massachusetts, Public Service Commission, Department of Health, and Board of Agriculture of Massachusetts.

Herbert Knox Smith for Connecticut Dairymen's Association and Connecticut State Grange.

William H. Chandler and *John C. Orcutt* for Boston Chamber of Commerce.

William T. Gunnison for Public Service Commission of New Hampshire.

L. H. Healy for Connecticut State Board of Agriculture.

Albert P. Worthen for New England Milk Producers' Association, the Granite State Dairymen's Association of New Hampshire, New Hampshire State Grange, Maine State Dairymen's Association, Maine State Grange, New Hampshire Department of Agriculture, and Vermont State Grange.

R. L. Cummings for Grange Service Committee of the Grangers of Maine.

Allen S. Olmsted, 2d; Duane, Morris & Heckscher; and Robert D. Jenks for Philadelphia Milk Exchange.

Cornelius A. Parker for Cream Dealers' Association of New England.

Charles A. McDonough for Mohawk Dairy Company.

H. N. Stearns for Lancaster Milk Company.

Nelson D. Cook for Llonwhitkill Farms Dairy.

Edwin C. Jenney for Alden Brothers Company.

Myron E. Pierce for Massachusetts Milk Consumers' Association.

Charles D. Sage for himself.

George Albree for himself.

W. C. Jewett for Massachusetts State Grange.

B. W. Potter, William P. B. Lockwood, and W. C. Jewett for Massachusetts Dairymen's Association.

J. Arthur Sherwood for Connecticut State Grange.

Joseph Madden for various individuals.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

In comparatively recent years the production and distribution of milk has become the subject of stringent regulation by municipal and state authorities with respect to the solids and butter fat it shall contain, and its freedom from disease bacteria. The necessity that the milk supply of the great urban population of the country shall be pure and wholesome is now everywhere deeply appreciated.

The remarkable growth of cities of the country has made it imperative to transport milk by railroad from increasing distances. Among other things, the agitation of the question of pure milk supply for city consumption has directed attention to the method of its transportation by railroad, and the charges made for the service. Many informal and formal complaints were filed with this Commission involving rules, regulations, and practices of carriers engaged in the interstate transportation of milk and cream. With a view to the disposition of the questions presented in a comprehensive manner, and in order to insure as full an understanding of the situation as possible, a general investigation of the subject of transportation of milk and cream throughout the country was instituted, with particular reference to those sections involved in formal complaints. All such complaints were consolidated with the general investigation, and will be properly disposed of in separate reports, or in connection with the general proceeding.

It developed soon after the hearing in the general investigation commenced in Boston, Mass., that circumstances and conditions applicable to the transportation of milk and cream to Boston and other large cities in the New England states are in most essential respects wholly different from those applicable to the transportation of similar traffic in any other part of the country. Interstate rates on carload shipments of milk and cream between points in the New England states are on a basis peculiar to that territory; and the regulations and practices of carriers with respect thereto are entirely different from those maintained elsewhere. It was therefore determined to dispose of the New England situation in a separate report.

In the month of September, 1915, the Boston & Maine Railroad, Maine Central Railroad Company, Rutland Railroad Company, Central Vermont Railway Company, Montpelier & Wells River Railroad Company, St. Johnsbury & Lake Champlain Railroad Company, and York Harbor & Beach Railroad Company filed schedules to become effective early in November, 1915, in which rates for the transportation of fluid milk and cream, buttermilk, condensed milk, evaporated milk, and pot cheese, in carloads and less than carloads, between points in the New England states, were proposed to be re-adjusted. The schedules, hereinafter described more in detail, involve increases and decreases in rates on milk, skim milk, buttermilk, and pot cheese. The rates on cream, condensed milk, and evaporated milk were proposed to be made 50 per cent higher than the proposed rates on milk, in both carloads and less than carloads, and the rates for movements in freight and passenger trains were to be the same. It was also proposed to establish joint rates for the trans-

portation of milk and cream in carloads from points on the Rutland and the Central Vermont to Boston in connection with the Boston & Maine on the same basis as proposed by the Boston & Maine. In the schedules now in effect rates on milk and cream are the same, and through rates from points on the Rutland and Central Vermont to Boston are made by combinations of intermediate rates. The proposed joint rates would result in some net reductions in the revenues of the Rutland and Central Vermont on milk in carloads. Present charges of the Boston & Maine on milk in carloads hauled in freight trains are 25 per cent less than those applicable to carloads hauled in passenger or milk trains. Upon protest against the proposed increased charges by Boston milk dealers, the schedules were suspended until August 29, 1916.

Subsequently, upon petition of the Public Service Commission of the Commonwealth of Massachusetts and others that a general inquiry be instituted as to the rates, regulations, and practices of carriers by railroad applicable to the interstate transportation of milk and cream in New England, the scope of the investigation was enlarged. The case of *Albree v. Boston & Maine R. R.*, 22 I. C. C., 303, was reopened. That case and the case of *Graustein v. Boston & Maine R. R.*, Docket No. 7788, were consolidated with the investigation as to the propriety of the rates proposed in the suspended schedules above referred to, and a general investigation was instituted concerning the rates maintained by common carriers for interstate transportation of milk and cream between points in New England, and the rules, regulations, and practices applicable thereto, with a view to determining whether the rates, rules, regulations, and practices are unreasonable, unjustly discriminatory, unduly prejudicial, or otherwise unlawful. We will first consider the justification submitted by respondents for the proposed increased rates involved in the suspended schedules.

Hereinafter, except when otherwise stated, where the word "milk" is used it will include skim milk, buttermilk, and pot cheese, and where the word "cream" is used it will include condensed and evaporated milk.

The evidence relates almost entirely to shipments of milk and cream to Boston from points in the New England states and the state of New York, although the rates apply between all interstate points in New England. Compared with that shipped to Boston, there is little milk and cream shipped interstate to other large cities in Massachusetts. The milk supply of cities outside of the territory around Boston is largely secured from near-by intrastate points. Therefore

the conditions with respect to shipments to Boston will have chief consideration here.

What is generally known as metropolitan Boston comprises 39 cities and towns within 15 miles of the statehouse in Boston proper. The aggregate population of these cities and towns is about 1,600,000. The Boston & Maine transports to Boston the largest percentage of the milk consumed in the cities and towns referred to. The chief supply is obtained from points in the states of Vermont, New Hampshire, Maine, Massachusetts, and New York. Some cream is shipped from the province of Quebec and some milk from the state of Connecticut. The Boston & Maine assumed the burden of justifying the proposed rates.

About 75 per cent of the fluid milk shipped into Boston over the Boston & Maine moves in carload lots, under what is known as the New England, or leased-car, system. For convenience the New England system will hereinafter be called the leased-car system, and the cars used therein leased cars. A detailed description of the leased-car system and its operation is to be found in *Albree v. B. & M. R. R.*, *supra*. It is sufficient here to state that under this system the carrier transports in both directions a milk car between designated points of origin and destination for a specified charge per annum. The carrier furnishes the car and warms it when attached to the train in winter. The milk dealer who contracts for the running of the car loads and unloads the milk and cream and provides refrigeration when required. The standard can in New England holds $8\frac{1}{2}$ quarts. The minimum carload is 1,050 $8\frac{1}{2}$ quart cans, or 8,925 quarts or the equivalent. Charges in proportion are made for cans in excess of the minimum. The dealer pays the carload rate from starting point of the shipment. It is also provided that milk and cream may be loaded into the car at scheduled stops of the train on the going trip and empty cans unloaded on the return trip. The charge for the car includes carrying the dealer's caretakers in both directions. The method pursued by the milk dealer in originating a leased-car route is to go among the farmers of a given section and contract with them for the delivery at certain railroad stations of an agreed quantity of milk for a given period, usually six months. The prices to be paid for the milk for the period are fixed at the same time. When contracts for sufficient milk to be delivered to specified stations have been secured to justify the use of a car, the dealer notifies the carrier to put one on the route, whereupon a tariff is filed and the car put in operation. The containers are generally owned and supplied by the dealer, and he cleans and keeps them in repair.

The present basis for computing specific rates applicable to carload shipments under the leased-car system, moving in passenger or milk trains, is as follows:

1 to 75 miles, per car per mile per annum.....	\$125. 00
Minimum charge, \$5,000.	
76 to 125 miles, per car per mile per annum, in addition to the charge for 75 miles.....	112. 50
126 miles or more, per car per mile per annum, in addition to the charge for 125 miles.....	75. 00
Maximum charge, \$18,000.	

The maximum charge is reached at 165 miles, as shown by the following:

\$125×75 miles equals	\$9, 375
125—75 miles equals 50.	
\$112.50×50 miles equals	5, 625
165—125 miles equals 40.	
\$75×40 miles equals.....	3, 000
Total	18, 000

If the car moves in a freight train, the charge of the Boston & Maine is 75 per cent of that resulting from the basis applicable when the movement is in a passenger or milk train; maximum, \$13,500.

There is only one milk train operated into Boston interstate, and it is operated by the Boston & Maine. It starts from Lyndonville, Vt., 193 miles from Boston, and picks up cars at St. Johnsbury, Wells River, and White River Junction, Vt., from which latter point it runs direct to Boston. The number of cars in the train varies from five to nine. The charges above stated include transportation of ice necessary to the proper refrigeration of the commodities shipped. They also include the privilege of loading and unloading at intermediate stations at which the train is scheduled to stop, and the return of the empty containers to points of original shipment, but they do not include icing, loading, or unloading service. It is also provided that shippers may employ not more than two caretakers per car to handle and care for the milk and cream and receptacles en route. The caretakers are transported free.

It is proposed in the suspended schedules to provide the following basis for specific carload rates on milk applicable in passenger, milk, and freight train service:

1 to 75 miles, per car per mile per annum.....	\$125
Minimum, \$5,000.	
76 to 150 miles, per car per mile per annum, in addition to the charge for 75 miles.....	100
151 to 200 miles, per car per mile per annum, in addition to the charge for 150 miles.....	75
200 miles or more, per car per mile per annum, in addition to the charge for 200 miles.....	50

It is proposed to cancel the maximum charge. The above basis would result in the same charges as the present passenger and milk train charges for distances up to 75 miles; lower charges for distances 76 to 149 miles; and increased charges for distances over 165 miles.

As before stated, carload charges on the Boston & Maine have been on a higher basis where a car moves in passenger train service than in freight train service. This distinction is carried to the extent of making the rates on a combination of freight and passenger service in accordance with the mileage in the respective services. In the suspended schedules, the proposed charges would apply to passenger, milk, and freight train service. It is also proposed to provide for mixed carloads of milk and cream. The charges, as proposed, are to be based upon the per quart charge for each commodity, subject to the minimum charge for a carload of milk.

Present rates of the Boston & Maine on milk and cream in less than carloads, in baggage cars, on passenger trains, without ice, are as follows, in cents per can :

	8½-quart.	10-quart.	20-quart.	21½-quart.	40-quart.	46-quart.	50-quart.
1 to 20 miles.....	2.0	2.35	4.7	5.0	9.40	10.82	11.75
21 to 40 miles.....	3.0	3.53	7.06	7.5	14.12	16.24	17.65
41 to 60 miles.....	4.0	4.71	9.42	10.0	18.84	21.65	23.55
61 to 100 miles.....	5.0	5.88	11.76	12.5	23.52	27.06	29.40
101 miles or more.....	6.0	7.0	14.0	15.0	28.0	32.0	35.0

The proposed rates on milk, in less than carloads, in baggage cars on passenger trains, without ice, are as follows, in cents per can :

	8½-quart.	10-quart.	20-quart.	21½-quart.	40-quart.	46-quart.	50-quart.
1 to 20 miles.....	3.0	3.53	7.06	7.50	14.12	16.23	17.64
21 to 40 miles.....	4.0	4.71	9.41	10.0	18.82	21.64	23.52
41 to 100 miles.....	5.0	5.88	11.76	12.5	23.52	27.05	29.40
101 to 150 miles.....	6.0	7.06	14.12	15.0	28.23	32.47	35.29
151 to 200 miles.....	7.0	8.24	16.47	17.5	32.94	37.88	41.17
201 miles and more.....	8.0	9.41	18.82	20.0	37.64	43.29	47.05

Rates on cream are proposed to be about 50 per cent higher than those last shown above. On bottled milk and cream, in cases of different sizes, there are proposed increased rates on less than carloads in baggage cars on passenger trains, which are comparable with the proposed increases on less than carloads of milk and cream in cans. There is no evidence in this record that there is any movement of milk and cream in bottles to Boston. Separate consideration of the rates on bottled milk and cream will not, therefore, be undertaken.

The Boston & Maine also now provides rates for the transportation of milk and cream in less-than-carload lots in milk or refrigerator 40 I. C. C.

cars on passenger trains, iced in summer and heated in winter, when shipments equal 5,100 quarts or more per day from any straightaway section not exceeding 40 miles. The rates for an 8½-quart can are one-half cent per can higher than the baggage-car can rates; and the other sized cans in proportion. It is proposed to increase these rates comparably with the proposed increased baggage-car rates without ice.

In schedules of the Boston & Maine there is a provision that charges for the transportation of milk and cream in receptacles other than those specifically provided for are the regular excess baggage rates for actual weight. It is not proposed to change this provision. It is designed to provide charges for occasional shipments, tendered in unusual packages, and at odd times.

Milk and cream in carloads from points on the Maine Central move to Boston in freight equipment and freight trains under joint rates with the Boston & Maine. Some cars are handled in passenger service on the Belfast branch of the Maine Central, but this is done under higher rates. The Maine Central publishes no rates for baggage-car service except on a short branch line leased from the St. Johnsbury & Lake Champlain Railroad. It also now publishes less-than-carload freight rates on milk and cream from a few points on its line to stated destinations on the Boston & Maine. These rates are little used, and it is proposed in the suspended schedules to cancel them. Less-than-carload shipments of milk and cream on the Maine Central generally move by express.

The carload rates on milk of the Rutland Railroad to Boston are on a combination basis. Its local rates are applicable to either passenger or freight service. The charges on leased cars are now \$21 per car to Bellows Falls, Vt., a junction of the Boston & Maine, from Rutland and points east, and \$26.25 per car from all other points. The charges per car are published specifically from each point, and the minimum is 25,000 pounds. The less-than-carload rates are for baggage-car service and on a different and higher basis than those of the Boston & Maine.

The Rutland also publishes joint rates to Melrose Junction in the city of New York in connection with the New York Central Railroad Company. These rates apply from points on the Ogdensburg, N. Y., division of the Rutland and certain points in Vermont from Alburgh south to White Creek. The traffic is turned over to the New York Central at Chatham, N. Y. The rates are on the same basis as is in effect to New York City via other lines. The present joint rates to Melrose Junction on milk are 30.2 cents per 40-quart can, in carloads, and 33.6 cents in less than carloads from all points; and the rates on cream are 47.3 cents per 40-quart can, in carloads,

and 52.5 cents in less than carloads. Per can rates, any quantity, are published for shipments of pot cheese. In 40-quart cans the rate is 33.6 cents for pot cheese and for 80-quart cans, 67.2 cents. No other per can rates are published, but there are rates published for different sized cases of bottles of milk and cream and certain containers for pot cheese. The less-than-carload rates in practice include icing when necessary. The Rutland Railroad Company pays one Stephen C. Millet under a contract which expires in 1919, 15 per cent of its proportion of the gross joint revenue on milk and cream moving to New York, to act as its milk agent, and to build and maintain shipping stations, to ice and care for shipments en route, etc. The New York Central Railroad Company also pays the same agent 12½ per cent of its proportion of the gross joint revenue derived from shipments received from the Rutland.

The present carload charges for leased cars from points on the Central Vermont to points on the Boston & Maine are on a combination basis. The local rates of the Central Vermont are on the same basis as those of the Boston & Maine, and the charges per car are published specifically from each point to the junction point. In baggage-car service the through charges on shipments to Boston are made on combinations of intermediate charges. The Central Vermont has a basis of its own for less than carloads, not necessary to be here described.

Practically no milk is shipped in New England by express. There is considerable movement of cream in 40-quart cans, precooled and shipped in insulating jackets from points in Maine, northern New Hampshire, and Vermont. The American Express Company carried 79,776 gallons of cream in July, 1915, and 61,270 gallons in November of the same year from various interstate points to Boston, Springfield, and Worcester, Mass. Considerable cream is shipped from points in Maine to New York City by express. Most of the cream transported by the express company is of the heavy variety.

At the same time that the Boston & Maine filed the suspended schedule with this Commission, it also filed with the Public Service Commission of Massachusetts a schedule proposing increased per can rates on state traffic, making them the same as the proposed per can rates, interstate. That schedule was suspended by the state commission, but has not been acted on.

It is contended by the respondents that present rates are too low for the service rendered. W. J. Cunningham, professor of transportation at Harvard University, and assistant to the president of the Boston & Maine Railroad, presented an exhibit which he stated was the result of an endeavor upon his part to ascertain the relation between the revenue derived by the Boston & Maine Railroad

from its milk traffic, and the share of the expenses which, in his judgment, should be apportioned to that traffic. His study covered the fiscal year ended June 30, 1915. He stated that his figures are indicative of the fact that the milk service is not bearing its full proportion of operating expenses, and that it does not contribute to the payment of taxes or return upon investment. No attempt was made to divide the business between state and interstate; the milk service was taken as a whole. His conclusion is that the figures presented by him are fairly accurate in their indication as showing the relative earning power of the milk traffic as compared or contrasted with the relative earning power of the passenger service or the freight service, taken separately.

The following is a summary of the calculations made by this witness:

40 I. C. C.

	Total.	Passenger.		Freight.		Milk service total (passenger and freight).
		Total.	Milk.	Total.	Milk.	
a (not including incidental revenue)	\$45,247,785.29	\$17,806,719.47	\$469,928.79 <i>Apportioned to milk.</i>	\$37,442,065.82	\$303,892.01 <i>Apportioned to milk.</i>	\$673,519.40
Over lines, grain elevators, storage ware-						
.....	7,118,802.33	2,873,650.99	\$140,076.09	4,244,961.34	\$35,988.24	.....
.....	6,645,064.92	1,984,674.78	97,563.81	4,660,390.16	40,137.32	.....
.....	443,680.63	248,678.04	7,034.52	195,013.90	2,832.21	.....
.....	20,036,733.73	7,186,536.07	342,267.80	12,870,197.66	101,950.31	.....
.....	1,178,968.68	422,653.47	20,567.37	756,446.21	6,500.92	.....
Total	35,423,080.29	12,606,083.93	607,532.59	22,726,996.36	187,400.00	.....
material						
company material	135,423,080.29	155,874.34	7,698.09	156,574.34	7,698.09	.....
in train operation	19,894,965.00	12,861,968.27	615,137.88	22,571,122.02	179,810.91	794,948.68
.....	.....	4,963,761.20	144,810.89	6,870,913.80	23,781.70	181,482.19
social trains	18,364,004	11,146,647	130.90	8,217,417	88.82	118.08
(incidental revenues):	276,081,346	456,994,701	2,778,196	6,219,088,647	1,882,848	4,661,046
.....	.....	3124	1002	1253	1081	14460
.....	2,404	1,5674	.....	8,9023	.....	.....
.....	.....	2265	2314	1030	0955	17065
.....	1,919	1,1580	.....	8,1273	.....	.....
.....	.....	0806	0684	0223	0126	02808
.....	545	4444	.....	6749	.....	.....

Figures in italics represent deficits.

as (such as grain elevators, coal and ore wharves, storage warehouses, etc.);

.85, divided between passenger and freight in proportion to total tons of ton; freight credited with charge to passenger, since freight service expenses

according to the class of service.

special train car-miles, passenger, giving total revenue passenger service

ilk car-miles in baggage-car service. Latter figure obtained by taking total milk service (8,928 quarts). Total of loaded car-miles was doubled to cover

pecial train car-miles, freight, giving total revenue freight service car-miles. Miles doubled to cover return movement of cars with empty cans.

It will be noted that the total revenue accruing to the Boston & Maine for the transportation of milk and cream moving in passenger and freight service in 1915 was \$673,519.40; that the operating ratio for milk and cream traffic in passenger service is 130.9 per cent, freight service 88.32 per cent, and total milk and cream traffic in passenger and freight service 118.03 per cent. According to this study, the operating expenses which should be charged against the milk service exceeded the revenue received from that service \$121,429.19.

The witness first allocated to passenger and freight service such expenses as are definitely assignable, taking separately each item in the classification provided by the accounting rules of the Commission. The maintenance of way and structures group was divided on a basis of locomotive fuel consumption; that is, on the basis of the number of tons of fuel consumed by locomotives in the two classes of service. In maintenance of equipment account about 93 per cent is directly allocated because accounts are kept separately as to repairs to passenger and freight engines and cars. He totaled the items directly allocated and found the proportion as between the two, and applied that percentage to all items in the maintenance of equipment group. In the traffic expenses group all items were directly allocated except the other expenses items, which were allocated on the percentage relation of those allocated. The transportation group was divided into four parts: (1) Station expenses, which were divided on the basis of a time report. Each station agent was asked to submit an estimate as to the time each of his employees was engaged in passenger service and in freight service for a period of one week. Men employed exclusively in one service were charged to that service. Men employed jointly were prorated on a basis of the number of hours employed in the two classes of service. It was found that 23.27 per cent of the expenses were chargeable to passenger service and 76.73 to freight service. (2) In yard expenses a similar method was employed. Yardmasters were called upon to make an estimate of the number of hours in a typical week that yard engines were employed in passenger-car switching and the number of hours in freight-car switching. It was found that 11.11 per cent of engine hours in switching service were chargeable to passenger and 88.89 per cent to freight. (3) Train expenses were directly allocated. (4) In general expenses the proportion that the allocated items in all the other groups bore to the total was ascertained, and that percentage was applied to the general expenses of the transportation group. By this method it was found that 35.84 per cent should be allocated to passenger service and 64.16 per cent to freight service.

The basis used in apportioning operating expenses to milk traffic is the ratio which the milk car-miles should bear to the total car-miles in the two services. With respect to milk moving in baggage cars, the number of quart-miles was ascertained. Waybills for a typical month were examined to determine the aggregate number of quarts moving and the distance each quart moved. The number of quarts was then multiplied by the distances. This sum was multiplied by 12 to ascertain the quart-miles for the year. The sum was then divided by 8,925, the minimum loading in quarts. The total number of car-miles so ascertained was multiplied by 2 to care for the return movement.

The total mileage of loaded cars carrying milk in passenger service, including the equivalent baggage car-miles, was 1,389,099, of which 214,042 was baggage car-miles. This figure was doubled, giving the total mileage in passenger service as 2,778,198. The percentage that this amount is to the total passenger car-miles of 56,994,701 is 4.875 per cent. The total mileage of loaded cars carrying milk in freight service was 941,424. This sum multiplied by 2 for return of empty cans gives a total mileage in freight service of 1,882,848. This sum is 0.8594 of 1 per cent of 219,086,647, the total car-miles in freight service.

The witness stated that the bases he used slightly burdened the passenger service and considerably understated the charge to freight service. He also stated that if the entire study had been based on the revenue car-miles it would have resulted in an allocation of 80 per cent of the expenses to freight service and only 20 per cent to passenger service.

It is to be observed that, according to this study, milk freight service earned \$23,781.07 more than operating expenses, and the milk passenger service did not come within \$145,210.89 of earning operating expenses. In this connection it may be noted that when milk is carried on freight trains the rates are generally 75 per cent of what they would be if carried on passenger trains.

The methods used and the results achieved by these calculations were the subject of vigorous attack by counsel for protestants and others. One of the contentions is that it is unfair to milk traffic to compute the total car mileage by doubling the loaded movement. There is force in this contention. It is estimated that 1,050 8½-quart cans, the minimum load of milk, weigh 19,188.75 pounds, and that 1,050 8½-quart cans, together with stoppers, weigh 6,037.50 pounds. The load in the car on its forward movement, not including the weight of the ice for refrigeration, would thus weigh 25,226.25 pounds. The weight of the empty cans on the return movement is 6,037.50 pounds.

It is further pointed out that carload shipments do not pass to or through the Boston passenger or freight stations, but are switched directly to plants of dealers or placed on team tracks; that caretakers on cars moving interstate are paid by the dealers; and that terminals for handling of milk at both points of origin and destination are largely owned by milk dealers.

Criticism is made of the use of the revenue car-mile basis. It is insisted that it is unfair to apportion expenses to milk traffic on that basis, because it treats a light, uninsulated platform milk car in the same manner as a heavy steel Pullman car; a first-class milk car the same as a box car; and a long milk car in the same manner as a short box car; that the car-mile basis is unreliable except where homogeneous traffic is involved; that it might be applied with some show of justice to apportion the expenses of coal traffic, where a large proportion of the business of the carrier consisted of coal; and that where the milk business constitutes but a small fraction of the entire business, it is highly improper to assume that the cost of transportation thereof is approximately the same as that of other commodities.

Many methods have been used by carriers as bases to calculate the allocation of expenses, such as pertain to the maintenance of way and structures, between passenger and freight service. Some of the methods are tabulated and discussed in *Western Passenger Fares*, 37 I. C. C., 1, 12. The results from the different methods indicate considerable variance in the amount allocated. This impresses us with the need for caution in adopting the conclusions reached. It is certain that all that is claimed by respondents as to the force to be given to the results can not be admitted. It is equally certain, we think, that the contention of the protestants that the figures and results therefrom are utterly worthless for consideration in this case can not be conceded. Some of the bases used, particularly the use alone of fuel consumed by locomotives to determine the allocation of passenger and freight service in maintenance of way and structures account, are open to serious question, but the results may be accepted as indicative that the milk traffic of the Boston & Maine under present rates is not, on the whole, remunerative.

The assistant freight traffic manager of the Boston & Maine submitted studies of the milk traffic with a view to determining rates for that traffic which should bear proper relation to rates on other commodities. Milk as expressed in quarts was reduced to a weight basis. A carload of milk was considered as 8,925 quarts, the minimum provided in Boston & Maine schedules. The number of quarts was reduced to pounds by multiplying by 2.15, the number of pounds

per quart. The weight of 1,050 8½-quart cans, or 6,037.5 pounds, was added, producing 25,226.25 pounds as the weight of a carload of milk. Considering milk as ordinary dead freight, comparisons were made of the proposed milk revenue per car with revenue derived from other commodities of similar value. It was shown that the proposed carload revenue from milk is comparable with carload revenue from hay, apples, potatoes, lumber, and products of petroleum. The revenue from milk would be somewhat lower than the average of the other commodities for short distances, and somewhat higher for longer distances. The commodities with which comparison was made, including mineral water, beer, cider, and cabbage, all move freely under fifth-class rates in New England. In view of the comparisons it was deemed proper to place milk, considered as ordinary freight, upon the fifth-class basis. Rates on milk include the return of the empty receptacles to points of origin of shipment. Rates under which empty milk cans and other empty receptacles are carried on the Boston & Maine are rule 26 for less than carloads, or 20 per cent below third-class rates but not lower than fourth-class rates. If rule 26 rates were applied to the return movements of empty cans, they would produce revenue of from \$6.04 to \$16.30 per car for distances of 40 and 300 miles, respectively. There are many special features connected with the transportation of milk besides the return of the empty cans. These were summarized by the witness as follows:

- (1) Expedited service in passenger trains, and preferred attention in fast freight trains.
- (2) Special equipment, costing much more than ordinary freight cars, as well as being more expensive to maintain.
- (3) Special handling in setting cars at plants in the Boston terminal.
- (4) Transportation without charge of ice necessary for refrigeration.
- (5) Free transportation of caretakers, who perform many duties in addition to handling milk cans in the cars.
- (6) Expensive pick-up and delivery service at various points.

The witness having decided upon fifth class as a fair basis for milk, when none of the special features are considered, stated that fourth-class rates as a basis for the loaded and empty movement would be as low as could be well made. He submitted an exhibit showing the car earnings from the application of fifth-class rates, together with charges for the empty cans at regular rates, and the earnings from the application of fourth-class rates for the round trip for various distances from 40 to 300 miles. The exhibit is as follows, carload rates for milk being based on a weight of 25,226 pounds.

Miles.	1 1,050 8½-quart cans equal 6,537.5 pounds minimum ship- ment.		2 Rate per car at fifth class.	Total of 1 and 2.	Present freight.	Present passen- ger.	Proposed.	Rate per car at fourth class.
	Per 100 cans, R. 26.	Per ship- ment						
40.....	\$0.10	\$6.04	\$17.66	\$23.70	\$10.28	\$13.70	\$13.70	\$22.70
50.....	.10	6.04	20.18	26.22	12.84	17.12	17.12	25.23
60.....	.12	7.25	20.18	27.43	15.41	20.55	20.55	30.27
70.....	.13	7.85	22.70	30.55	17.98	23.97	23.97	32.79
80.....	.14	8.45	25.23	33.68	20.42	27.22	27.05	35.32
90.....	.15	9.06	27.75	36.81	22.73	30.30	29.79	37.84
100.....	.16	9.66	27.75	37.41	25.04	33.39	32.53	37.84
110.....	.16	9.66	30.27	39.93	27.35	36.47	35.27	40.36
120.....	.17	10.26	30.27	40.53	29.66	39.55	38.01	42.88
130.....	.18	10.87	30.27	41.14	31.00	42.12	40.75	42.88
140.....	.18	10.87	32.79	43.66	33.14	44.18	43.49	45.41
150.....	.18	10.87	32.79	43.66	34.67	46.23	46.23	45.41
160.....	.19	11.47	35.32	46.79	36.22	48.29	48.29	47.93
170.....	.20	12.08	35.32	47.40	36.99	49.32	50.34	47.93
180.....	.20	12.08	35.32	47.40	36.99	49.32	52.40	50.45
190.....	.21	12.68	37.84	50.52	36.99	49.32	54.45	50.45
200.....	.22	13.28	37.84	51.12	36.99	49.32	56.51	52.97
210.....	.22	13.28	40.36	53.64	36.99	49.32	57.88	52.97
220.....	.23	13.89	40.36	54.25	36.99	49.32	59.25	55.50
230.....	.23	13.89	40.36	54.25	36.99	49.32	60.62	58.02
240.....	.23	13.89	42.88	56.77	36.99	49.32	61.99	58.02
250.....	.24	14.49	42.88	57.37	36.99	49.32	63.36	60.54
260.....	.25	15.09	45.41	60.50	36.99	49.32	64.73	60.54
270.....	.26	15.70	45.41	61.11	36.99	49.32	66.10	63.06
280.....	.26	15.70	45.41	61.11	36.99	49.32	67.47	63.06
290.....	.26	15.70	47.93	63.63	36.99	49.32	68.84	65.59
300.....	.27	16.30	47.93	64.23	36.99	49.32	70.21	65.59

The class rates on which the calculations are based are those approved in conferences of New England railroad commissioners. *Second Annual Report of the Public Service Commission of Massachusetts*, 1914, vol. 1, p. 40. Two scales were suggested by the commissioners, and adopted by the Boston & Maine and other New England carriers. The standard scale is for lines of greater traffic density. For lines of the same system, or independent lines having lesser traffic density, a scale 16½ per cent higher is published. The rates used by the witness are those provided in the standard scale, although much of the milk traffic originates and is handled for some distances in territory where the higher rates prevail.

It will be noted that the exhibit shows the proposed rates, except for shorter distances, will earn slightly more per car than a combination of fifth-class rates for the loaded movements and rule 26 rates for empty cans; that fourth-class rates would yield more revenue than the proposed milk rates for distances up to 150 miles; and that for distances beyond 150 miles the fourth-class rates would yield somewhat less than the proposed rates.

Another exhibit was submitted showing a reduction to a 100-pound basis of the milk and cream traffic of the Boston & Maine for the fiscal year ended June 30, 1915. The revenue that would be derived from the proposed rates was compared with the averages of the class rates for the same distances. A study of this exhibit shows that if

the milk traffic of the Boston & Maine were to move under the proposed rates the same distances and in the same volume as during the year referred to, the revenue from hauls up to 100 miles would be equal to fifth-class rates or less; from 101 to 150 miles between fourth and fifth class rates; and from 151 to 300 miles substantially fourth-class rates.

It was considered by the witness that the standard first-class rates were reasonable to be applied to less than carloads of milk. The proposed baggage-car rate, without ice, is lower than first-class rates for all distances in excess of 50 miles, and somewhat higher for shorter distances. Exhibits show that revenue per 100 pounds under the proposed rates would be less than that derived from the application of first-class rates. It is shown by exhibits that the present revenue for less-than-carload shipments of milk, reduced to a weight basis, approximates second-class earnings for distances up to 150 miles. Beyond that distance the proposed rates would produce less revenue than second-class rates.

Numerous exhibits were filed which compared the present and proposed rates of the Boston & Maine on carloads and less than carloads with those of other carriers serving the city of Boston and carriers serving other cities.

The following table submitted by the Boston & Maine shows per car earnings, in dollars, under the present and proposed rates of the Boston & Maine, compared with similar earnings under rates maintained by other carriers for the distances shown:

Carload rates per trip, ice furnished by shipper.

Miles.	B. & M. current, 8,925 quarts. ¹	B. & M. proposed 8,925 quarts. ¹	N. Y., N. H. & H., 8,925 quarts. ²	N. Y. C., Hudson division, 10,000 quarts. ³	D., L. & W. and L. V., 10,000 quarts. ⁴	Erie, 9,000 quarts. ⁵	N. Y. O. & W., 12,000 quarts. ⁶	Penn- sylvania, 8,000 quarts. ⁷
15.....	\$13.70	\$13.70	\$15.00	.....	\$52.75	\$47.48	\$63.30	\$34.80
30.....	13.70	13.70	15.00	.....	52.75	47.48	63.30	34.80
45.....	15.41	15.41	15.41	\$71.00	59.75	53.78	71.70	40.00
60.....	20.55	20.55	20.55	71.00	59.75	53.78	71.70	40.00
75.....	25.68	25.68	25.68	71.00	59.75	53.78	71.70	47.40
90.....	30.30	29.79	30.82	71.00	59.75	53.78	71.70	47.40
105.....	34.92	33.90	35.96	71.00	66.75	60.08	80.10	53.00
120.....	39.55	38.01	41.10	71.00	66.75	60.08	80.10	53.00
135.....	42.12	42.12	46.23	71.00	66.75	60.08	80.10	53.00
150.....	46.23	46.23	51.37	.....	66.75	60.08	80.10	53.00
165.....	49.32	49.32	56.50	.....	66.75	60.08	80.10	53.00
180.....	49.32	52.40	61.64	.....	66.75	60.08	80.10	53.00
195.....	49.32	55.48	66.78	.....	73.50	66.15	88.20	58.00
210.....	49.32	57.88	71.92	.....	73.50	66.15	88.20	58.00
225.....	49.32	59.93	77.06	.....	73.50	66.15	88.20	58.00
240.....	49.32	61.99	82.19	.....	73.50	66.15	88.20	58.00
255.....	49.32	64.04	87.33	.....	73.50	66.15	88.20	58.00
270.....	49.32	66.10	92.47	.....	73.50	66.15	88.20	58.00
285.....	49.32	68.15	97.60	.....	73.50	66.15	88.20	58.00
300.....	49.32	70.21	102.74	.....	73.50	66.15	88.20	58.00

¹ Boston & Maine Railroad, rates to Boston.

² New York, New Haven & Hartford Railroad Company, rates to Boston.

³ New York Central Railroad Company, rates to New York.

⁴ Delaware, Lackawanna & Western Railroad Company; Lehigh Valley Railroad Company, rates to New York.

⁵ Erie Railroad Company, rates to New York.

⁶ New York, Ontario & Western Railway Company, rates to New York.

⁷ The Pennsylvania Railroad Company, rates to Philadelphia.

The following tables give comparative charges, in mills per quart, under the present and proposed rates of the Boston & Maine compared with similar charges maintained by other lines for service without and with ice:

Less-than-carload baggage-car service without ice.

Miles.	Rate per quart, in mills, computed on 84-quart basis.				Rate per quart, in mills, computed on 40-quart basis.		
	B. & M. current.	B. & M. proposed.	B. & A.	N. Y., N. H. & H.	C., B. & Q.; C., M. & St. P., and Ill. Cent. ¹	L. S. & M. S. ¹	Chicago district rates.
15.....	2.35	3.53	3.53	5.88	5.0	3.75	4.75
30.....	2.53	4.70	4.70	7.05	5.25	5.0	4.9
45.....	4.70	5.88	5.88	7.05	6.0	6.25	5.0
60.....	4.70	5.88	5.88	8.23	6.5	7.5	5.5
75.....	5.88	5.88	5.88	8.23	7.0	7.5	6.0
90.....	5.88	5.88	5.88	8.23	7.25	7.5	6.5
105.....	7.05	7.05	7.05	9.41	7.75	8.75	6.5
120.....	7.05	7.05	7.05	9.41	8.0	8.75	6.5
135.....	7.05	7.05	7.05	9.41	8.25	8.75	.....
150.....	7.05	7.05	7.05	10.60	8.5	8.75	.....
165.....	7.05	8.23	8.23	10.60	8.75	9.4	.....
180.....	7.05	8.23	8.23	10.60	9.0	9.4	.....
195.....	7.05	8.23	8.23	10.60	9.25	9.4	.....
210.....	7.05	9.41	9.41	12.35	9.5	10.0	.....
225.....	7.05	9.41	9.41	12.35	9.75	10.0	.....
240.....	7.05	9.41	9.41	12.35	10.0	10.0	.....
255.....	7.05	9.41	9.41	12.35	10.25	11.25	.....
270.....	7.05	9.41	9.41	12.35	10.5	11.25	.....
285.....	7.05	9.41	9.41	12.35	10.75	11.25	.....
300.....	7.05	9.41	9.41	12.35	11.0	11.25	.....

¹ Chicago, Burlington & Quincy, Chicago, Milwaukee & St. Paul, Illinois Central, and Lake Shore & Michigan Southern rates to Chicago.

Less-than-carload milk-car service with ice.

[Rate per quart, in mills, computed on 40-quart basis.]

Miles.	B. & M. current.	B. & M. proposed.	N. Y. C., Hudson division.	D., L. & W., Erie, L. V., and N. Y. O. & W.	Penna.	P. & R. ¹
15.....	2.94	4.12	.....	6.03	5.0	5.2
30.....	4.12	5.29	.....	6.03	5.0	6.87
45.....	5.29	6.47	7.9	² 6.8	5.75	6.87
60.....	5.29	6.47	7.9	² 6.8	5.75	6.87
75.....	6.47	6.47	7.9	² 6.8	6.82	.....
90.....	6.47	6.47	7.9	6.8	6.82	.....
105.....	7.6	7.65	7.9	7.6	7.62	.....
120.....	7.6	7.65	7.9	7.6	7.62	.....
135.....	7.6	7.65	7.9	7.6	7.62	.....
150.....	7.6	7.65	.....	7.6	7.62	.....
165.....	7.6	8.82	.....	7.6	7.62	.....
180.....	7.6	8.82	.....	7.6	7.62	.....
195.....	7.6	8.82	.....	8.4	8.4	.....
210.....	7.6	10.0	.....	8.4	8.4	.....
225.....	7.6	10.0	.....	8.4	8.4	.....
240.....	7.6	10.0	.....	8.4	8.4	.....
255.....	7.6	10.0	.....	8.4	8.4	.....
270.....	7.6	10.0	.....	8.4	8.4	.....
285.....	7.6	10.0	.....	8.4	8.4	.....
300.....	7.6	10.0	.....	8.4	8.4	.....

¹ Philadelphia & Reading rates to Philadelphia. ² Lehigh Valley R. R., 6.5 mills per quart.
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The average revenue in cents per ton-mile, including ice; per car-mile, loaded and empty movement; and per gross ton-mile, freight and car, loaded and empty movement, received by the Boston & Maine from all its milk and cream traffic in each of its services for the year ended June 30, 1915, is shown by the following table:

	Passen- ger.	Freight.	Mixed.	Leased car.	Average.
Per car-mile.....	21.37	9.55	11.41	15.80	14.73
Per ton-mile.....	2.74	1.22	1.46	1.89	1.50
Per gross ton-mile, freight and car.....	.54	.35	.34	.36	.43

The computations in the above table are made from an exhibit filed by the Boston & Maine, which purports to show the total milk traffic of that road for the year ended June 30, 1915. To obtain the car-mile and gross ton-mile revenue the minimum load was used and the tare of the cars and the weight of the ice were estimated.

The average revenue per car-mile on the Boston & Maine for the year ended June 30, 1915, as shown by its annual report from all freight traffic, loaded and empty movements, was 12.80 cents; and the average revenue per ton-mile for the same year from all freight traffic was 1.12 cents. The specific rate on leased cars from practically all Maine Central points to Boston is \$37 in freight service. The average distance of the haul is about 217 miles. The per car-mile yield, based on the minimum load, is 17 cents for the loaded movement, and 8.5 cents for the loaded and empty movement.

The protestants contend that, considering the character of the milk-car equipment of the Boston & Maine, speed of trains, terminal facilities, and other details of the service, the present rates are too high when compared with the rates and service afforded New York dealers.

The Boston & Maine has 87 milk cars, 9 passenger equipped refrigerator cars, and 10 transformed baggage cars as its milk equipment for state and interstate milk and cream traffic. Of these cars, 65 are not insulated. The Maine Central has 85 cars in its milk and cream service. Most of them are ordinary refrigerator cars, some are dairy product cars, and the remainder converted box cars. All are fitted with ice bunkers. The Rutland Railroad has 76 cars in its milk service, with a capacity of 60,000 pounds. They are all insulated. The record does not show the milk equipment of the Central Vermont. It is asserted by dealers that the character of the Boston & Maine equipment is poor, and that many of the cars will not carry the minimum load, heavily iced, without exceeding capacity. It is conceded by the Boston & Maine that its milk equipment

is not of the best, but it asserts its inability to acquire and maintain better equipment under existing rates. The scheduled speed of milk trains to New York City and that of the trains of the Boston & Maine and its connections hauling milk to Boston are not essentially different, although some of the New York milk trains are operated at speed varying from 30 to 45 miles per hour. An exhibit filed by one of the Boston dealers shows that the average running time of trains, freight and passenger, transporting his milk to Boston is about 15 miles per hour. Other exhibits on file show that the average speed of trains moving from and to Boston is about 20 miles per hour. The maximum haul for Boston dealers is about 300 miles. New York dealers may and do have hauls to a maximum of 500 miles. Shipments of milk to New York are delivered at milk stations. The bulk of it is delivered at New Jersey terminals, necessitating ferriage and hauling to plants of dealers, the expense of which is paid by them. The larger part of interstate milk shipped to Boston is delivered on spur tracks at plants of dealers by the Boston & Maine. Shipments to New York City largely move through in carloads from shipping stations owned by dealers without transfer at junction points. With respect to the 38 cars of milk and cream moving interstate daily to Boston, there are 25 interchanges between carriers and 42 changes of cars from train to train, involving much switching in special service. About one-third of the total mileage of milk cars moving to Boston is in passenger trains. If the cars from Maine Central points, which always move in freight trains, are excluded, passenger train mileage would be about one-half of the total. The pick-up service, which ranges from 8 to 18 stops per car, except in Maine Central territory, where stops are not so numerous, is almost wholly in passenger trains. In northern New England territory practically all stations for handling, processing, and loading milk have been built and are owned by Boston dealers. The owners of the stations which are on railroad property, except some small loading platforms on Boston & Maine land, are charged land rent for the occupation. As before stated, the Rutland pays a milk agent 15 per cent of its proportion of the gross receipts on milk and cream traffic to New York City, and other carriers now pay or have paid in the past from 15 to 20 per cent of the gross receipts from their milk and cream traffic to persons or corporations to build up their milk business to New York City. No such payment has been made by any New England carrier with respect to milk traffic moving to Boston. The Boston dealers have largely built up the business at their own expense.

In argument, and on supplemental brief, protestants make comparisons between milk revenue per mile of line of the Boston &

Maine and certain western carriers defendants in *Beatrice Creamery Co. v. I. C. R. R. Co.*, 15 I. C. C., 109. By these comparisons it is shown that the milk revenue per mile of line on the Boston & Maine is greater than the average of the western carriers with which comparison is made. Comparisons of the density of traffic were also made between western carriers and those operating in trunk line territory. From these comparisons it is concluded by the protestants that carriers in New England are fairly entitled to receive 75 per cent of the Beatrice scale for cream, and 75 per cent of the cream rates thus fixed for milk. A table is submitted comparing the present rates of the Boston & Maine with the suggested rates, which show on that basis for most distances lower rates. We are not impressed with the result of such comparisons, although they are presented with ingenuity and earnestness. In the *Beatrice Case* we fixed rates for cream for butter-making purposes, a commodity which does not require refrigeration, expedited movement, nor any special care during transportation. In this case we are considering the proper relation between passenger and freight service, carloads and less than carloads, privileges accorded particular shippers, together with proper charges for competing territories, all of which were not considered or discussed in the *Beatrice Case*. Comparisons are also made with rates on live stock prescribed in the *Eastern Live Stock Case*, 36 I. C. C., 675, 687. We do not conceive that the comparisons are at all persuasive under the conditions that prevail with respect to shipments of milk and cream in New England.

It is urged that no higher rates should be made on cream than on milk. Both commodities move in the same kind of containers, in the same cars, and in the same trains; and are alike susceptible to deterioration in transit in the event of improper handling. It is shown by this record that loss and damage claims are negligible for each. Cream is of much greater value than milk. A 10-gallon can of 4 per cent butter fat milk is valued at \$2.46, and the same quantity of 17 per cent butter fat cream at \$7.30, and 44 per cent cream at \$17.10. In quart bottles, milk is sold to family trade in Boston at from 8 to 10 cents. Cream in quart bottles is sold at different prices, according to the butter fat content. For example, 17 per cent cream is delivered at 25 cents; 26 per cent at 35 to 40 cents; and 40 per cent at 50 to 60 cents. The rates on cream should bear relation to the rates on milk, as they are analogous commodities; however, they are distinct in character. Cream is produced by a process of separation from milk. The volume of the movement of cream is very much less than that of milk. About 20 per cent of the traffic from Maine Central points is cream; and the largest dealer in Boston ships about 10 per cent of his daily traffic as cream. It is said that about 15 per cent

of the total traffic is cream. Cream is transported at higher rates by carriers serving New York City, and the Boston & Albany and the New York, New Haven & Hartford publish higher rates on cream than on milk to Boston. Cream may be classed among higher grade commodities of greater value and can fairly bear higher rates than milk. Under ordinary rules of rate making higher rates for cream should be maintained. Whether the charge should be uniformly 50 per cent higher is a question which will be discussed later.

It is estimated by Boston dealers that the proposed increase of rates will yield an aggregate increased revenue of \$255,549.72 per annum, as applied to the milk and cream traffic of the Boston & Maine for the fiscal year 1915. The Boston & Maine estimates that the aggregate increase of revenue to it from the proposed rates will be about \$161,000 per annum. It is impossible to estimate, with any degree of accuracy, the amount of increased revenue that will result from the proposed adjustment. If present rates are unduly low, as contended by respondents, they should be established on a reasonable basis without special regard to the amount of revenue to be derived therefrom. A shipper of milk is entitled, as a matter of law, to have his traffic move at no higher than reasonable charges, and the carrier is entitled to receive for its service no less than reasonable charges. Looking at the charges for the transportation of milk and cream now in effect, and taking into consideration all the special circumstances and conditions surrounding the transportation thereof by respondents, we are of opinion that as a whole they are generally lower than we would be justified in prescribing. This does not mean, of course, that respondents have submitted such justification of the proposed rates, rules, and regulations with respect to the transportation of milk and cream as to warrant us in permitting or ordering their maintenance for the future. It is not proposed in the suspended schedules to change the leased-car system. This brings us to consider the larger and more important question of the lawfulness of that system, and the adjustment of less-than-carload rates in relation thereto.

It is contended by milk dealers in Boston that the lawfulness of the leased-car system is not in issue in this proceeding, unless changed conditions since the decision in the *Albree Case*, *supra*, have made it unlawful. In that case, page 327, our conclusions were:

I. That the leased-car system is not, if the tariffs are properly framed, unlawful.

II. That a per can rate bearing a proper relation to the carload rate should be established.

III. That where, as to the city of Boston, milk must be handled under refrigeration, icing facilities should be provided when shipments at the per can rate are offered from a given section equaling 600 cans per day.

Responsive to the above conclusions, the Boston & Maine published rates for the transportation of milk and cream in less-than-carload lots in milk or refrigerator cars, iced in summer and heated in winter, to be operated on its lines on milk or passenger trains when the shipments equal 5,100 quarts or more per day from any straightaway section of 40 miles. The per can rates for this service were made by adding one-half a cent per $8\frac{1}{2}$ -quart can, other sized cans in proportion, designed to cover cost of ice and handling, to the baggage-car rates without ice for various sized receptacles. There was no other material change made in the tariffs with respect to per can rates applicable on less-than-carload shipments. In speaking of per can rates in relation to carload rates in the *Albree Case*, page 327, we said that—

If the relation of these rates is not properly adjusted now, it should be. As we have said, the carload shipper is entitled to a better rate than he who can only present for shipment a less than carload, since the cost of service is less, but that difference must not be greater than circumstances warrant.

In that case, at page 323, it was also said that—

The per can rate may be so high, as compared with the carload rate, as to give to the carload shipper an undue preference. If the Boston & Maine did operate a milk car upon its per can schedule, the cost of transportation by that means might be so much more to the independent shipper than the cost of transportation under the leased car to the operator as to give the operator a virtual monopoly of the business. Manifestly the two rates must be properly adjusted with reference to each other. If the present relation is wrong, it may be inquired into and corrected, but in this record no such question is presented.

The reasonableness of the rates was not in controversy in that case. We therefore have before us in this investigation not only the lawfulness of the leased-car system as now conducted, but the reasonableness of rates applicable to less-than-carload shipments, and the relation of rates between those maintained for leased cars and less than carloads. In other words, a vital element necessary to proper consideration of the whole matter was not included in the former case. The conclusion of the Commission in the *Albree Case* was that so long as a method for transportation of milk and cream in less than carloads at relatively reasonable rates was provided, the leased-car system was not unlawful.

The leased-car system for transportation of milk and cream in New England has been in effect, under substantially the same regulations as are in effect to-day, but, with varying rates, for more than 50 years. During much of that time there has been controversy over the propriety of such a system in the New England states generally, and in the state of Massachusetts in particular. Widespread interest was

manifested in these proceedings. The hearings were largely attended by the general public, and parties engaged in the milk business, producers, and consumers were all represented by able counsel. An exhaustive investigation was had, and it was the expressed wish of all parties that controversy with respect to the transportation in New England of such necessary food products as milk and cream should be set at rest and a harmonious and reasonable adjustment of rates prescribed for the future.

In the year 1910 the legislature of the state of Massachusetts passed what is known as the "Saunders law," which provides for shipments of milk and cream by the can at the same rate, and with equal facilities and advantages, provided for shipments in larger quantities. The effect of the act, as construed by the Boston & Maine, was to abolish the leased-car system on its lines in Massachusetts. At the same time that it filed with the Massachusetts commission rates per can, iced in summer and heated in winter, applicable to milk and cream traffic intrastate, the Boston & Maine filed a schedule with this Commission to become effective August 1, 1910, designed to cancel provisions for leased cars on its system, and proposed to establish charges per can for transportation of milk and cream in refrigerator cars, iced in summer and heated in winter, on passenger and milk trains, including the return of the empty cans, between all stations on its lines, as follows:

Distances.	8½-quart cans.	10-quart cans.	20-quart cans.	40-quart cans.
	Cents.	Cents.	Cents.	Cents.
1 to 20 miles.....	3.5	4.2	8.3	16.5
21 to 40 miles.....	4.9	5.8	11.5	23.0
41 to 100 miles.....	5.6	6.5	13.0	26.0
100 to 190 miles.....	6.2	7.3	14.5	29.0
191 miles or more.....	6.8	8.0	16.0	32.0

Except for the first two groups, the grouping proposed was the same as prescribed in *Milk Producers Protective Assn. v. D., L. & W. R. Co.*, 7 I. C. C., 92. The charges per can were substantially on the basis established by the New York carriers after the decision in that case. Charges for the transportation of milk and cream in baggage cars, on regular trains, without ice, including the return of the empty cans, were proposed to be made slightly less per can. Upon protest by Boston dealers, the schedule applying interstate was suspended by this Commission. A hearing was had, but before the case was submitted the respondent canceled the proposed schedule and filed another, which restored the leased-car system under somewhat different regulations and higher charges. It appears that the schedule was agreed upon at a conference between the respondents and Boston milk dealers.

The quantity of milk transported to Boston has increased rapidly since the year 1908. In that year the gross receipts of the Boston & Maine from its passenger milk service were \$277,714.23, and in 1915, \$469,926.29. Gross revenue from milk in passenger, freight, and milk train service of the Boston & Maine has increased from \$323,666.27 in 1910 to \$673,519.40 in 1915. Joint freight revenue on milk and cream from points on the Maine Central to Boston via the Boston & Maine from 1912 to 1915 is shown by the following table:

Year ended June 30—

1912	\$61,846.39
1913	83,793.25
1914	100,979.50
1915	131,365.11

The tendency of the Boston dealers has been, and now is, to secure the bulk of their milk and cream from ever increasing distances. Few, if any, new shipping points have been designated by them since the decision in the *Albree Case*, but there is largely increased volume of milk from more distant points. Exhibits on file show that 70 per cent of leased cars start from points more than 165 miles from Boston, of which 40 per cent start from more than 200 miles.

Transportation by leased cars is a unique method in this country. New England carriers are the only ones which have adopted such a system. Its undoubted tendency is to create and perpetuate a monopoly of the milk transportation business in the hands of those who operate leased cars. The greater quantity of milk consumed in metropolitan Boston is shipped to four large dealers. In 1910 there were seven dealers shipping milk and cream in leased cars from interstate points to Boston. In 1915 there were 15, but of these, 5 shipped one car per week; 1 four times a week; and 5 shipped only cream. There are 755 persons and corporations licensed to sell milk and cream in metropolitan Boston. Many of them buy their supply from large dealers or secure it from dairies near by, which are reached by auto trucks or wagons. A number supply city customers from their own dairies.

Laws of the state of Massachusetts require that milk must contain not less than 3.35 per cent of butter fat and that cream must contain not less than 18 per cent. The health regulations of the city of Boston provide that milk shall not be handled if its temperature exceeds 50° F.; that no milk shall be sold which contains more than 500,000 bacteria to the cubic centimeter; and that milk sold for family consumption shall be delivered in sealed bottles. The necessity for constant refrigeration in the warm months of the year; for examination as to butter fat content and bacteria count; for pasteurizing, bottling, and otherwise processing; for keeping the milk in condition to pass

inspection tends to centralize in a few dealers the larger part of the milk business of Boston. Our investigation in various sections of the country outside of New England has shown that concentration of the milk business in the hands of a few dealers in large cities is the tendency everywhere because of increasing rigidity of inspection of dairies and milk and the changing methods of distribution. The extent to which the consolidation of the milk business in a few hands has been carried in metropolitan Boston is not approached in any other city so far as our investigation shows. In the city of New York the New York Central, which transports 38 per cent of the milk hauled to that city, delivers its shipments to 145 receivers, of whom only 8 receive in carload lots. The Lehigh Valley delivers milk to 20 New York City dealers at Jersey City, of whom 5 receive carloads; the Erie has 30 receivers and 5 in carloads. At Philadelphia and Chicago there are many direct shipments to numerous dealers by farmers. There are few direct shipments to Boston from interstate points. The minimum volume of milk that can be profitably handled by a single dealer in metropolitan Boston is from 500 to 600 8½-quart cans per day. This natural tendency to concentration of the milk and cream supply of cities in the hands of a few large dealers ought not to be accelerated by preferential charges and regulations of carriers applicable to and governing the transportation of the traffic.

It is earnestly contended by Boston milk dealers that because of conditions that exist in New England the only practicable method of furnishing metropolitan Boston with its milk and cream supply is by the leased-car system. No other system has ever been tried with respect to the transportation of the larger part of the milk shipments to that point. Since 1910 Massachusetts intrastate milk has moved under the per can system by the Boston & Maine and Boston & Albany, but at charges so much higher than those applicable to shipments in leased cars that, naturally, Boston dealers have preferred the latter. It is asserted by these dealers that near-by milk is practically nonexistent and that to secure a supply they are required to go farther distances. About 30 per cent of Boston's milk and cream supply, however, now comes from points comparatively near to Boston. The New Hampshire state line is about 30 miles from Boston. During the year ended June 30, 1915, the Boston & Maine carried, at per can rates, from distances 1 to 60 miles, 32,162,525 quarts of milk, or 18.6 per cent of the total amount transported. The Boston & Albany, during the year 1914, carried 4,930,427 quarts to Boston from comparatively short distance points. This traffic moved largely in baggage cars, without ice, and on the average at much higher charges per quart than was charged shipments moving in leased cars.

It is insisted that the state of Massachusetts is primarily a consuming market; that most of the milk produced in the state is consumed in cities and towns contiguous to farming areas; that metropolitan Boston must obtain its milk supply from outside the state, and that because of the lack of production to the east and south and nearness to the New York market the principal milk supply can only be obtained from Maine, New Hampshire, and Vermont.

It is further urged by Boston dealers that they have expended large sums of money in plant facilities in Boston, and in erecting platforms, sheds, ice houses, and creameries in the country to carry on their business under the leased-car system; all of which will be greatly diminished in value, or rendered wholly useless, if the system is changed. It is further insisted that the leased-car system is the most economical method for transporting milk and cream to Boston; and that it is necessary for dealers to have their own caretakers to ice and handle shipments en route, to insure proper delivery at Boston, and also to advise and assist farmers to produce and properly tender milk for shipment.

Farmers and dairymen from many parts of New England, organizations of farmers through their officers, and representatives of the agricultural departments of New Hampshire, Connecticut, and Vermont appeared at the hearing and testified that agricultural conditions as a whole in New England are deplorable, particularly in the dairy industry; that the number of cows has decreased alarmingly in the last 10 years in each of the New England states; that farms have been abandoned; and that many farmers have gone out of the dairying business. The decrease in the dairy industry is due, according to witnesses, to low prices received for milk. The price paid by dealers to many farmers is below the cost of production, and a further reduction in prices would be disastrous to the industry. Protests against the proposed increased rates and change of system, signed by about 4,000 Maine and New Hampshire farmers, were submitted by a shipper of milk and cream to Boston. It is shown that in a large part of New England the only buyers for the Boston market are those who use the leased cars. There are buyers at many of the points for other cities than Boston, and for creameries that may be located in the region. The demand in the other cities is limited and the field of consumption easily supplied. Except in a few localities where more than one car of milk is produced, the dairy farmer must sell his product in Boston to one dealer, who operates a leased car. Rates are so made and groups so arranged that dealers naturally seek to develop distant territory. Near-by farming areas have no such transportation advantage as should attend their locations. It is not contended that the condition of the New England farmer or

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dairyman is wholly due to the leased-car system. The contention is that under the per can system the producer has full opportunity to select his customer, which opportunity does not exist under the leased-car system. The belief is that more buyers will come into the producing fields when opportunity is given them to do so at reasonable and nondiscriminatory charges, and that competition will revive and stimulate a decadent industry. That this will be the result of adopting the per can system in New England is stoutly contested by Boston dealers, who insist that increased cost of transportation consequent thereupon will fall upon the producer and thus further depress the industry.

Fifteen years ago there were 72 independent creameries in the state of Maine; 24 in New Hampshire; 240 in Vermont, including 30 cheese factories; 20 in Massachusetts; and 19 in Connecticut. These creameries sent their entire product to market as butter or cheese. In 1915, 55 of the 72 creameries in Maine were owned by four companies which shipped whole milk, cream, and skim milk largely to the Boston market; these companies make butter only when there is a surplus of milk on hand. In New Hampshire and Vermont from 60 to 75 per cent of the creameries are now owned by milk dealers. In Massachusetts and Connecticut there are about 30 creameries which are selling cream and butter, but their output is small compared with the large dairy sections of other states in New England. Creameries have not been generally profitable in New England, and their number is not increasing. The competition that is afforded by creameries, as against Boston milk buyers who operate leased cars, is not particularly effective.

In metropolitan Boston dealers receive about 9 cents per quart for delivery of milk to family trade in bottles; from 6 to 8 cents for delivery of milk to retail dealers in bottles; and about 6 cents for delivery to the wholesale trade in cans. The price paid to farmers and dairymen by dealers varies with different seasons of the year, with different localities, and with the butter fat content of the milk or cream. Generally speaking, the farther from the market milk is produced, the lower the price paid therefor. It is impossible to ascertain from this record the average price paid to New England dairy farmers for milk. Prices vary from \$1.10 per 100 pounds in May and June to \$2.20 in December; prices for butter fat vary from 25 cents to 39 cents per pound; and the price for an 8½-quart can of milk varies from 25 to 45 cents. On the whole the price paid dairy farmers in New England is as high as, or higher than, that paid to dairy farmers in New York state or other parts of the country generally.

The increase in rates proposed by the Boston & Maine amounts to, on the average, 1.3 mills per quart of milk. The Boston dealers as-

sert that, due to their narrow margin of profit, they can not bear any increase in rates; that the burden of the increase will fall on producers; and that prices may not be increased to consumers without curtailing consumption. We are not convinced on this record that if rates are increased in a moderate amount the price to the producer need be reduced, but if the leased-car system is unlawful for any reason, a change must be made without regard to a destruction of certain business interests, the price paid to the producer or charged the consumer. Those are questions entirely foreign to matters with respect to which the statute confers regulatory authority upon this Commission. If no more than reasonable rates are prescribed to apply to shipments under a change of system, the resulting revenue therefrom is justifiable.

A less-than-carload shipper of milk and cream can not, under the present schedules of the respondents, have his property transported to Boston under ice at charges which bear reasonable relation to the charges applicable to shipments in leased cars. He may precool his shipments and have them transported in baggage cars in cans covered with insulating jackets, but at charges that do not permit him to compete on any reasonable basis in consuming markets. In order to have his shipments move under refrigeration, the less-than-carload shipper must tender to the carrier no less than 600 8½-quart cans, or the equivalent in quarts, at charges per quart higher than provided for less-than-carload shipments in baggage cars without ice.

The following table shows present rates, in cents, for transportation in 8½-quart cans, and the charges in mills per quart of milk from points on the Boston & Maine in Massachusetts, New Hampshire, Maine, and Vermont to Boston, and the charges per quart in leased cars, together with the distances of the haul:

	Miles.	In baggage cars (per can).	Per quart.	Per quart in leased cars.
Massachusetts:				.
Pepperell.....	45	4	4.7	.....
Charlemont.....	128	6	7	.....
New Hampshire:				
Dover.....	67	5	5.8	2.5
Plymouth.....	121	6	7	4.69
Lancaster.....	206	6	7	4.69
Maine:				
North Berwick.....	75	5	5.8	2.88
Gorham.....	118	6	7	4.41
Farmington.....	192	(1)	(1)	4.14
Belfast.....	237	(1)	(1)	4.14
Dover and Foxcroft.....	247	(1)	(1)	4.14
Vermont:				
Swanton.....	281	6	7	5.52
Newport.....	228	6	7	5.52
Bellows Falls.....	114	6	7	4.22

1 No baggage-car rate.

As before stated, from points on the Central Vermont and Rutland the present through charges on both leased and baggage car shipments are made on combinations of intermediate rates. The following table shows the present charges per 40-quart can in cents, and the charges per quart in mills, in baggage cars and leased cars, from representative points in Vermont on shipments to Boston, together with the distance of the hauls by each carrier:

	Miles.	In baggage cars.		In leased cars.	
		Milk per 40-quart can.	Cream per 40-quart can.	Charges per car.	Per quart.
Brandon:					
Boston & Maine.....	114	28	28	¹ \$37.71	4.22
Rutland.....	69	20	30	² 26.25	2.88
Total.....	183	³ 48	⁴ 58	63.96	7.10
North Bennington:					
Boston & Maine.....	114	28	28	37.71	4.22
Rutland.....	106	25	35	² 26.25	2.88
Total.....	220	⁶ 53	⁷ 63	63.96	7.10
Randolph:					
Boston & Maine.....	140	28	28	45.21	5.06
Central Vermont.....	32	20	30	⁸ 15.00	1.26
Total.....	172	⁸ 48	⁴ 58	60.21	6.81

¹ Minimum, 8,925 quarts.
² Minimum, 25,000 pounds. Applies on milk only.
³ 1.2 cents per quart.
⁴ 1.45 cents per quart.

⁵ Applies on milk only.
⁶ 1.325 cents per quart.
⁷ 1.57 cents per quart.
⁸ Minimum, 12,000 quarts.

The following table shows present charges in cents per 40-quart can for baggage-car shipments without ice, compared with rates for 40-quart cans in leased cars, and the percentage relation for distances shown:

Miles.	Baggage car.	Leased car.	Percent-age.	Miles.	Baggage car.	Leased car.	Percent-age.
40.....	14.12	6.12	230	100.....	23.52	14.96	157
41.....	18.84	6.28	300	101.....	28.0	15.10	185
60.....	18.84	9.20	205	165.....	28.0	22.08	127
61.....	23.52	9.36	251				

The proposed rates would increase the spread between less-than-carload rates and leased-car rates for all distances up to 250 miles.

Under schedules now in effect there is no provision for less-than-carload shipments of milk and cream under ice from Maine Central points to Boston, except from four points in Maine from which specific rates for freight shipments are published. In the suspended schedules it is proposed to establish joint rates with respect to shipments of milk and cream in leased cars from points on the Central

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Vermont and the Rutland to Boston, but no such joint rates are proposed for less-than-carload lots. Joint rates from a few points in Vermont and numerous points in New York on less than carloads are published by the Rutland, but they are on the basis of combination of intermediate rates. In present schedules of the Boston & Maine it is provided that leased-car shippers may have their cars move in freight trains at 75 per cent of the charges for movements in passenger trains. Less-than-carload shippers always pay charges applicable to passenger service, except from the few points on the Maine Central, as above noted. The grouping of points of origin of shipments in leased cars is entirely different from the grouping with respect to less than carloads. The result of all this is that three-fourths of the milk and cream shipped to Boston from interstate points is now transported in leased cars. There are practically no less-than-carload shipments from Rutland and Central Vermont points.

In the *Albree Case*, page 323, it was said that to establish the per can system in New England is to abolish the leased-car system. It is impossible under the conditions in New England, with its small dairies and scattered locations on short branch lines of railway, to maintain the two systems at the same time and in the same section. The adoption by the Boston & Maine of the suggestion of the Commission in the *Albree Case* that per can rates for shipments of milk and cream under refrigeration should be established for less-than-carload shipments of 600 8½-quart cans has not relieved the situation. Few shipments of that character have been made, and but one car is now being used by one dealer in Boston for a part of the year only. The total revenue from this service for the fiscal year 1915 was \$3,475.23. The milk dealer who operates a leased car has special privileges in connection with the service. He has pick-up, substitution, and delivery privileges which are of conceded advantage, and do not pertain with respect to other carload traffic, and for which he pays nothing in addition to his carload charges. The larger operators have the leased cars delivered to their plants in Boston. Users of leased cars have their caretakers, who are transported free of charge, and it is admitted they perform services of great value to their employers not in any way connected with the caretaking or handling of milk and cream and empty containers during transportation. In effect the leased car transports what is practically less-than-carload shipments at low carload rates. In any contest with a less-than-carload shipper the large dealer has so many advantages in addition to the low transportation charges that as a practical matter no other shipper can successfully compete in consuming markets.

The leased-car rates are so grouped and adjusted that the user thereof can go long distances from the city and secure his supply of milk and cream. It is an economic waste to haul milk for long distances if it may be secured at shorter distances. No rate adjustment can be successfully defended which deprives any shipper of the natural advantage of proximity to point of consumption. The wide spread between the leased-car per can rates and the less-than-carload per can rates have a natural tendency to discourage the production of near-by milk. The present charges per can afforded the leased-car user are so low that he can transport his milk 300 miles at a lower per quart charge than is paid by the less-than-carload shipper whose milk is produced at a point 100 miles from Boston. The result is, of course, that a dairy farm in northern New Hampshire, Maine, Vermont, or even Canada is substantially as valuable for the purpose of supplying milk to Boston as a similar farm one-third the distance therefrom. The dairyman comparatively near to the Boston market who must ship, if at all, in small lots, can not compete successfully with a dealer using leased cars in that market if his shipments require refrigeration to make them conform to the city regulations.

It is clear from this record that charges and regulations with respect to shipments of milk and cream maintained by respondents, and by all carriers in New England outside the state of Massachusetts, foster and protect the leased-car system and insure to the users of cars under that system practically complete domination of the transportation of those commodities in New England. Milk and cream normally would move in less-than-carload quantities. This is particularly so in New England, with its small dairies and many short lines of railway. The unit of milk and cream shipments is the can. There is not in the schedules of respondents, nor those of any other carrier in New England outside of Massachusetts, any method provided by which the small shipper may have his property transported at charges that bear a reasonable relation to those maintained for the leased-car user.

By section 1 of the act it is made the duty of common carriers to furnish transportation of property upon reasonable request therefor; and transportation is defined to include all services in connection with refrigeration, icing, and handling of property transported. Under the leased-car system, New England carriers delegate to private individuals a part of their transportation function. If this may lawfully be done at all, carriers are bound to establish charges and maintain regulations with respect thereto which do not unduly discriminate against any shipper engaged in the same business. The

leased-car system is inconsistent with the per can system. The two can not with justice to all shippers be maintained contemporaneously by carriers in New England. Inasmuch as the two systems can not be operated at the same time with just and reasonable rates and regulations applicable to each, the one which confers special privileges on particular shippers must give way in the interests of the general shipping public.

From all the facts and circumstances of record we are of opinion, and so find, that charges and regulations maintained by respondents, applicable to shipments of milk and cream in carloads under the leased-car system, unduly prefer the users thereof, and unduly prejudice shippers of the same commodities in less-than-carload lots, and are, therefore, unlawful and may not be maintained for the future. The proposed schedules must therefore be ordered canceled.

The conclusion we have reached means that transportation of milk and cream in New England must be conducted in the future under an almost complete change of conditions. Neither in the *Albree Case* nor in this proceeding have the interested carriers defended or opposed the leased-car system. It is contended by them that the measure of the rates applicable to a per can system in New England has not been in issue in this proceeding; that the issue here is merely the propriety of the leased-car system and the reasonableness of certain charges proposed therefor; and that the Commission should not prescribe charges applicable to a per can system until the extent of the loading thereunder, the cost of icing, and other important features connected with handling the traffic under that system can be determined by actual experience. It is to be said that respondents did not attempt to increase charges for the transportation of milk and cream in leased cars only, but they proposed to increase charges on less-than-carload shipments of milk, and at the same time to increase rates on cream in both carloads and less than carloads. Under the investigation and suspension case the propriety of all proposed charges is properly before us, together with the lawfulness of the leased-car system involved in the investigation of the whole New England situation. It is further to be said that a change in system, with consequent changes in rates and regulations, inaugurated for experimental purposes by the New England carriers, could have no other result than to reopen the whole controversy anew, with consequent delay and annoyance to all concerned. In the mass of evidence that has been submitted to this Commission with respect to charges, regulations, and practices of New England carriers applicable to and governing the transportation of milk and cream, all of which is

proper to be here considered, are facts upon which to determine what would appear to be reasonable charges and what regulations should be prescribed for the future applicable to a per can system. The New York, New Haven & Hartford and the Boston & Albany are defendants to this proceeding. They reach Boston and transport milk and cream to that point from interstate points. These carriers have not proposed to increase their rates. The whole question, however, is properly here, and should be disposed of in answer to the widespread public demand for a settlement of a matter which has been the subject of bitter contention for so many years.

Carload rates on milk are published by the New York, New Haven & Hartford from specific points in Connecticut and Massachusetts to Boston. The movement is in leased cars under regulations similar to those maintained by the Boston & Maine. The basis for the specific rates published is \$125 per mile per car per annum. This carrier picks up milk in Connecticut and Massachusetts in the same leased cars. It does not construe the Saunders law in Massachusetts to prohibit such a practice. When cream is shipped over the New York, New Haven & Hartford, 1 quart of cream is to be taken as the equivalent of 1½ quarts of milk. The charges for the transportation of milk and cream, less than carloads, in baggage cars, are as follows, in cents per quart, including the return of the empty can, but not including ice:

Distance.	Milk.	Cream.	Distance.	Milk.	Cream.
Less than 20 miles.....	0.588	0.882	100 to 149 miles.....	0.941	1.411
20 to 49 miles.....	.706	1.059	150 to 199 miles.....	1.080	1.590
50 to 99 miles.....	.823	1.234	200 miles or more.....	1.235	1.852

The less-than-carload rates, it will be observed, are on a much higher basis than those maintained by the Boston & Maine and the groups of points of origin are on a different basis.

The Boston & Albany has no interstate schedules applicable to milk originating outside the state of Massachusetts on its own lines. Its milk and cream traffic is largely confined to shipments intrastate in Massachusetts. Its less-than-carload rates are higher than those maintained by the Boston & Maine applicable to Massachusetts traffic. It is a participating carrier in schedules of the New York Central and Delaware & Hudson, which publish carload rates from specific points in New York to specific points in Massachusetts. The charges on carload shipments to Boston published by the Delaware & Hudson are complained of in *Hood & Sons v. D. & H. Co.*, Docket No. 7852, consolidated with the general investigation, and that case will be disposed of in a separate report.

We here have under consideration only rates applicable to and regulations governing interstate shipments of milk and cream by New England carriers. There is a total absence of uniformity in rates, groupings, and regulations. The chief consuming market for milk produced in New England is metropolitan Boston. Milk and cream transported to that point from all points in New England must be sold in competition. It is important, therefore, that some system of uniformity should be maintained by New England carriers for the future.

In reaching a conclusion as to reasonable charges under the per can system, we have taken into consideration that 75 per cent of milk and cream now moving to Boston and other points in New England is transported at very low charges when compared with charges applicable to the other 25 per cent; that a change of rates to a reasonable distance scale means increased charges for the greater volume of the traffic; that a change in the system will require a transfer from users of leased cars to the carriers of the duty of loading and unloading, icing, and handling the traffic during its transportation, and loading and unloading the returned empty containers; and that the carriers will be obliged to acquire and maintain facilities and terminals and provide icing facilities. Manifestly, we may not with justice to all parties prescribe charges which we might have justification for were the question presented entirely free from considerations which grow out of the long continuance of another system. We are bound to consider that New England carriers have not paid out large sums of money to build up their milk and cream business; and that the business was originated and brought to its present proportions largely through the efforts of Boston dealers and at their own expense. It follows, of course, that rates made under such circumstances are with reference to the peculiar conditions which exist in this case and are not for that reason to be taken as an expression by this Commission of what, under ordinary circumstances and conditions, would be just and reasonable charges for the transportation of milk and cream for similar distances.

Under all the facts and circumstances of record, taking due account of considerations above stated, we find that the following scale of maximum rates in cents per can is reasonable for the interstate transportation, jointly and severally, over lines of carriers in New England of milk, in less than carloads, including skim milk, buttermilk, and pot cheese, in milk, passenger, and mixed freight and passenger trains, in milk or refrigerator cars, heated in winter and iced in summer, including the return of the empty containers.

Miles.	8½-quart.	10-quart.	20-quart.	21½-quart.	40-quart.	46-quart.	50-quart.
1 to 20.....	3.4	3.8	6.3	6.7	11.4	12.8	13.8
21 to 40.....	4.2	4.7	7.8	8.2	13.9	15.7	17.0
41 to 60.....	4.9	5.4	9.0	9.4	16.1	18.2	19.6
61 to 80.....	5.4	6.1	10.0	10.5	18.0	20.3	21.9
81 to 100.....	6.0	6.7	11.0	11.5	19.7	22.2	24.0
101 to 120.....	6.4	7.2	11.9	12.5	21.3	24.0	25.9
121 to 140.....	6.9	7.7	12.7	13.3	22.8	25.7	27.7
141 to 160.....	7.3	8.2	13.5	14.1	24.2	27.2	29.4
161 to 180.....	7.7	8.6	14.2	14.9	25.5	28.7	30.9
181 to 200.....	8.1	9.0	14.9	15.6	26.7	30.1	32.4
201 to 220.....	8.4	9.4	15.6	16.3	27.9	31.4	33.9
221 to 240.....	8.8	9.8	16.2	17.0	29.0	32.7	35.3
241 to 260.....	9.1	10.2	16.8	17.6	30.1	34.0	36.6
261 to 280.....	9.4	10.5	17.4	18.2	31.2	35.2	37.9
281 to 300.....	9.7	10.9	18.0	18.8	32.3	36.3	39.1
301 to 320.....	10.0	11.2	18.5	19.4	33.2	37.4	40.3
321 to 340.....	10.3	11.5	19.0	20.0	34.1	38.5	41.5
341 to 360.....	10.6	11.8	19.6	20.5	35.1	39.6	42.6
361 to 380.....	10.9	12.2	20.1	21.1	36.0	40.6	43.7
381 to 400.....	11.1	12.5	20.6	21.6	36.9	41.6	44.8
401 to 420.....	11.4	12.8	21.1	22.1	37.8	42.6	45.9
421 to 440.....	11.7	13.0	21.5	22.6	38.6	43.5	46.9
441 to 460.....	11.9	13.3	22.0	23.1	39.4	44.5	47.9
461 to 480.....	12.2	13.6	22.4	23.6	40.2	45.4	48.9
481 to 500.....	12.4	13.9	22.9	24.0	41.0	46.3	49.9

It will be noted that the scale is made in 20-mile blocks for the entire distance. Rates on milk and cream in New England have always been maintained upon group bases applicable to carloads and less than carloads. The groupings have not been the same with respect to each on single lines, nor the same as between different carriers. It was found impracticable to resolve these groups each into the other and to require the maintenance of one system of grouping at all comparable to those now in effect on any just and reasonable basis. A distance scale, to be made applicable between all points in New England, with increasing rates for distances comparable with those prescribed in the *Beatrice Case, supra*, could not be prescribed without increased revenue to the carriers and increased charges to shippers to an extent not justified by the evidence in this record.

The rate differences between the blocks we have provided are moderate, and shippers from more distant blocks from consuming markets will not be subjected to undue disadvantage as compared with shippers from the nearer blocks. The blocks also represent a maximum teaming distance of 10 miles to the center, which will permit of concentration of shipments at common points.

Rates on different sized cans are now based on the contents, although the use of the smaller cans involves additional labor in handling, greater use of floor space in cars, extra icing, accounting, etc. We have computed the rates in the above scale on the basis of measurements of the cans, and have taken into consideration other elements that justify somewhat lower per quart rates in larger containers.

The rates on 8½-quart cans are slightly less for distances 1 to 40 miles than were proposed by the Boston & Maine in 1910, and are higher for longer distances; for 40-quart cans they are somewhat lower for all distances up to 300 miles. On the whole, the rates will increase the gross revenues of the carriers. These revenues, however, will be reduced by increased expenses due to icing, caring for shipments during transportation, and loading and unloading, which is now largely performed by dealers. The readjustment should lead to economies in transportation and practices now attendant on the business.

As above stated, we are of opinion that rates on cream should be somewhat higher than the rates on milk. There is no uniformity with respect to the relation of rates on milk and cream maintained by different carriers in the country. On shipments to New York City the rate on a 40-quart can of cream is substantially 18 cents higher than the rate for a 40-quart can of milk, with rates in proportion on other sized containers. This results in a different percentage relation with each zone rate on milk. The average difference between milk and cream, however, is over 75 per cent. The rates on cream are from 37½ to 100 per cent higher on the Boston & Albany and 50 per cent higher on the New York, New Haven & Hartford. In central freight association territory generally the rates on cream are 25 per cent higher than the rates on milk. *In re Unjust and Unreasonable Increase in the Rates for the Transportation of Milk and Cream*, the Pennsylvania commission, in a decision dated March 15, 1916, filed in this record, prescribed rates on cream from intra-state points to Pittsburgh 25 per cent higher than on milk. It is further to be observed in this connection that milk and cream have always taken the same rates on the Boston & Maine and the Maine Central. Under all the circumstances here shown, we are of the opinion that the rates on cream should not exceed the rates on milk by more than 25 per cent.

Milk and cream have always been transported from Maine Central points to Boston in freight cars and in freight trains. For many years the Boston & Maine and the Maine Central jointly have maintained a basis of rates 25 per cent less for this transportation than for similar movements over the Boston & Maine in passenger or milk trains. There are comparatively few pick-up points in Maine on the Maine Central. Shipments are made to creameries or milk stations, owned by dealers, who ship therefrom in carloads. If we were to prescribe rates on milk from Maine Central points on the basis of the above scale it would increase charges therefrom out of proportion with the increases from other points. The service from Maine Central points is not comparable with service in pas-

senger or milk cars on passenger or milk trains. The initial cost of cars is much less, and it does not cost so much to maintain them. Other costs of the service in freight trains are much less. It is conceded by carriers that freight service is rendered at less cost to them, and that shipments in milk cars in passenger service may properly be higher than for shipments in freight cars and freight trains. All facts and circumstances considered, we are of opinion and find that where milk and cream are transported from points of origin to destinations in New England in freight cars in freight trains in carloads without ice and in less than carloads with ice, when necessary, and including the return of the empty containers, the charge therefor should be based on rates not to exceed 75 per cent of those provided in the scale heretofore found reasonable for movements in passenger equipment in milk, passenger, or mixed trains.

Shipments in carloads, iced by the shipper, are less expensive to operate and should properly take a lower rate than shipments in less than carloads, but only so much lower as the difference in service warrants. With respect to shipments of carloads of milk to New York City, there is a difference on the average of about 12½ per cent between the carload and per can rates. On the Pennsylvania Railroad the spread between carloads and less than carloads on shipments of milk and cream is about 15 per cent, and on the Baltimore & Ohio 10 per cent. In many parts of the country there are no carload rates provided by carriers. We are of opinion that carload rates should be provided for where the shipments are from one consignor to one consignee from one point of origin to one destination to be iced by the shipper, at not more than 87½ per cent of the scale we have provided for less than carloads, including the return of the empty containers. The minimum provision should be made to conform to the ability of shippers to load cars and in no instance should exceed the loading capacity, including weight of the ice.

It is probable, we think, that when the scale herein prescribed is published, there will be a marked decrease in shipments in baggage cars without ice. Over substantially all lines of the Boston & Maine system where milk is produced in any quantity, there is an iced car now being operated. However, for some time there may be a demand for service without ice in regular baggage cars on passenger trains; and rates should be established on a somewhat lower basis than herein prescribed for transportation of such less-than-carload shipments which do not require ice or other special handling while en route.

Rates on milk and cream in bottles in cases should be established on the present relationship to rates in cans in conformity with the rates herein found reasonable.

We are of opinion that provision should be made for mixed shipments of milk and cream in carloads; rates to be made on the basis of the per can rates for each commodity in carloads, subject to the minimum provided for milk.

The carriers herein involved should keep a detailed record of receipts and expenditures on account of the milk and cream traffic under the new system and rates for the period of one year. At the end of that time, if it appears that the rates and regulations herein prescribed are not reasonable, the matter may be called to our attention by the defendants.

The case of *Graustein v. B. & M. R. R.*, Docket No. 7788, consolidated with this proceeding, will be disposed of in a separate report.

An order will issue requiring cancellation of the schedules containing the proposed increased rates and the establishment of the rates herein found reasonable on or before October 1, 1916.

HALL, *Commissioner*, dissents.

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No. 4800.
SLOSS-SHEFFIELD STEEL & IRON COMPANY ET AL.
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Decided July 3, 1916.

Upon examination of reparation claims which have been filed with the Commission pursuant to the supplemental report herein, 35 I. C. C., 460, this second supplemental report is issued to remove certain confusion which exists and to facilitate the disposition of the reparation matters involved.

SECOND SUPPLEMENTAL REPORT OF THE COMMISSION.

BY THE COMMISSION :

In its report in the above-entitled proceeding, entered under date of July 22, 1915, 35 I. C. C., 460, 463, the Commission found that the rates on pig iron in carloads from producing points in Alabama and Tennessee to points in central freight association territory to which the rates were not reduced on October 1, 1914, were unreasonable to the extent of 35 cents per gross ton. The Commission also found that the complainants and interveners who made shipments to such points on or after October 1, 1914, and who bore the transportation charges thereon were damaged, and that upon receipt of statements in proper form the matter of entering orders for reparation would be further considered.

Upon examination of reparation claims which have been filed with the Commission pursuant to the above-cited decision, considerable confusion is found to exist as to the territory involved, the proof of claim to be submitted, and the parties entitled to reparation on shipments sold f. o. b. destination. For these and other reasons certain carriers have declined to verify claims. In order to remove the confusion and to facilitate the disposition of the reparation matters involved, the following is announced.

TERRITORY INVOLVED.

Statements have been filed claiming reparation on shipments which moved to points which are not in central freight association territory. That territory is officially described by the central freight association as follows:

Beginning at Buffalo, N. Y., thence via the Erie Railroad through Dayton to Salamanca, N. Y.; thence via Pennsylvania Railroad through Corydon, Pa.,

and Warren, Pa., to Parker, Pa.; thence via Baltimore & Ohio Railroad through Butler to Pittsburgh, Pa.; thence via Baltimore & Ohio Railroad through Washington, Pa., Wheeling and Parkersburg, W. Va., to Point Pleasant, W. Va.; thence via Kanawha & Michigan Railway to Gauley Bridge, W. Va.; thence to Gauley, W. Va.; thence via Chesapeake & Ohio Railway to Ashland, Ky.; thence via north bank of the Ohio River, but including Louisville, Ky., to Cairo, Ill.; thence via east bank of Mississippi, but including St. Louis, Mo., to East Burlington, Ill.; thence via Toledo, Peoria & Western Railway to Peoria, Ill.; thence via Atchison, Topeka & Santa Fe through Streator and Joliet, Ill., to Chicago, Ill.; thence via west bank of Lake Michigan to Kewaunee, Wis.; thence through Lake Michigan and Straits of Mackinac; thence via west bank of Lake Huron to Port Huron, Mich.; thence to Sarnia, Ontario; thence via Grand Trunk Railway through Stratford, Guelph, and Georgetown to and including Toronto, Ontario; thence via line through Lake Ontario and Niagara River; thence through Suspension Bridge, Niagara Falls, North Tonawanda, Black Rock, to and including Buffalo, N. Y.

Reparation may be awarded on shipments to points on the west bank of Lake Michigan south of and including Kewaunee, Wis., where the transportation was performed in connection with across-lake carriers from east bank ports.

In *Stephens-Adamson Mfg. Co. v. A. G. S. R. R. Co.*, Docket No. 7789, the rate on pig iron in carloads from the Birmingham district to Aurora, North Aurora, Batavia, and St. Charles, Ill., which points are not in central freight association territory, was found to be unreasonable. The complainants in that case should file their claims under Docket No. 7789.

Where carriers are willing to make reparation on shipments to points not in central freight association territory, applications for permission to do so should be submitted on the special docket.

SHIPMENTS SOLD F. O. B. FURNACE.

Some of the shipments which moved since October 1, 1914, upon which reparation is due, were sold f. o. b. furnace. As to all such shipments upon which the consignees paid and bore the transportation charges, they are entitled to reparation. Where such consignees intervened prior to submission, reparation will be awarded to them upon filing the detailed statement of shipments as indicated in the report, properly verified by the carriers which collected the charges, accompanied by an affidavit stating that they paid and bore the freight charges and are entitled to the reparation claimed.

As to such consignees who did not formally intervene before the submission of this case, upon receipt of applications for permission to make reparation, accompanied by a like affidavit, the same will be considered upon the special docket with a view to an award of reparation.

If the consignees of such shipments assign their interests to the consignors, the latter will be entitled to reparation. Where such assignees are complainants reparation may be awarded to them by supplemental order herein upon receipt of statement properly verified, affidavit, and assignment, and where they are not parties to this proceeding by special docket order, upon receipt of application, affidavit, and assignment.

SHIPMENTS SOLD F. O. B. DESTINATION.

Other shipments were sold f. o. b. destination under contracts which provided as follows:

This price is based on present tariff freight rate of \$—— per ton. In case tariff freight rate declines, buyer is to have the benefit of such decline. In case tariff freight rate advances, buyer is to pay the advance.

Both the consignor and consignee claim reparation on these shipments.

The consignees contend that they are entitled to reparation on the ground that the contracts of sale provided they were to have the benefit of reductions in the rates, and that, as the contracts were based on the rates then in effect, had the rates been lower the sale prices would have been correspondingly lower.

In *Baker Manufacturing Co. v. C. & N. W. Ry. Co.*, 21 I. C. C., 605, the Commission considered the right of the consignee to reparation under contracts of sale containing the clause hereinabove quoted. The same contentions were made in that case, but the Commission held that the complainant was not entitled to reparation on the ground that—

the provision in the contracts in regard to the selling price of the iron, being based on the freight rate, amounts to no more than an agreement between the parties as to changes which might occur in the rate.

The Commission has held without exception that where freight charges are paid by consignees but are charged back to the consignors, the consignees are not entitled to reparation. *Mountain Ice Co. v. D., L. & W. R. R. Co.*, 21 I. C. C., 45; *Commercial Club of Omaha v. A. & S. R. Ry. Co.*, 27 I. C. C., 302; *Traffic Bureau, Sioux City Commercial Club, v. A. & S. R. R. Co.*, 37 I. C. C., 353; and other cases.

In *Hygienic Ice Co. v. C. & N. W. Ry. Co.*, 37 I. C. C., 384, the Commission held that the party entitled to reparation is the one who finally bore the freight charges.

In *Oden & Elliott v. S. A. L. Ry.*, 37 I. C. C., 345, the Commission held that the party entitled to recover is he who has either by himself or by another paid and borne the freight charges for the

transportation service, and that the ultimate test as to who shall recover is the bearing of the freight charges for the transportation service.

Whatever may be the rights or equities of the consignors and the consignees arising out of their contract as to variations in their agreed price for the commodity, dependent upon changes in the transportation rates, they present no question that is cognizable by this Commission, dealing, as it does, with the legal public obligations of the carrier, which is a stranger to the private contract between consignor and consignee.

Upon these facts and following the cases hereinabove cited, the consignors are entitled to reparation on shipments sold f. o. b. destination.

As to the consignors which are parties to this proceeding, reparation will be awarded to them upon receipt of detailed statements properly verified by the carrier which collected the charges, accompanied by an affidavit stating that they bore the freight charges and are entitled to reparation. If not parties hereto, upon receipt of application for permission to make reparation, accompanied by a like affidavit, the same will be considered upon the special docket with a view to an award of reparation. If the consignors assign their interests to the consignees, the latter will be entitled to reparation. Where such assignees are interveners reparation may be awarded to them by supplemental order herein, and where they are not parties to this proceeding by special docket order.

McCHORD, *Commissioner*, dissenting:

I am unable to agree with that part of the majority decision herein which holds that on the shipments sold f. o. b. destination the consignors are entitled to the reparation as against the consignees.

The pig iron on which it has been held that unreasonable rates were assessed, 35 I. C. C., 460, was sold under written contracts. Where the sale is made f. o. b. destination, the delivered price is specified in the contract. The following quotation from one of the contracts is illustrative:

Price: Fourteen dollars and twenty-five cents per ton of 2,240 pounds, delivered at Edwardsville, Ill. This price is based on present tariff rate of \$3.50 per ton. In case the tariff freight rate declines the buyer is to have the benefit of such decline. In case the tariff freight rate advances the buyer is to pay the advance.

Payment: Freight, cash. Balance, 30 days from average date of monthly shipments.

It has apparently become the custom for the consignor to forward the monthly shipments, freight collect, and the consignee pays the freight charges. Under the terms of the contract it is to be noted

that the freight included in the contract price is payable in cash. The consignee remits monthly to the consignor, 30 days after the average date of monthly shipments, the balance of the contract price due on such shipments.

The duty to entertain, consider, and decide complaints for reparation is imposed upon this Commission by section 9 of the act to regulate commerce. Under this section a person claiming to be damaged has the right to elect whether to complain to this Commission or bring his suit in a court of the United States. The jurisdiction of this Commission with respect to reparation is concurrent, therefore, with that of the courts.

The right to reparation is provided in section 8 of the act, but reparation may only be awarded by this Commission as damages. The damages awarded under section 8 of the act are like any other legal damages. "Damages" is the law's redress for the violation of a legal right. Under the act there is created by substantive enactment the right to be charged only reasonable rates for interstate transportation. We have heretofore determined in this case that such a legal right has been violated and further found, 35 I. C. C., 463, that the parties *who bore the transportation charges* on the shipments made have been damaged and are entitled to reparation on the basis of the difference between the rates paid and the rates therein found reasonable.

Unless a party to this case can show that he bore the transportation charges here involved, he can not establish the right to reparation because if he has not borne the transportation charges it must follow that he has not been damaged. This does not mean, however, that the party who has paid and borne the transportation charges has to show further that he has not passed his damage on to an ultimate consumer. This Commission has no jurisdiction over any persons but those who are parties to the transportation. The ultimate consumer other than the consignor or consignee can never be a claimant for reparation under the act, because he is not a shipper with respect to the particular transportation in connection with which it is found that a legal right has been violated and because of which damage has accrued.

In cases where it is found that a rate is unreasonable and has been unreasonable in the past, the same proof that establishes the unreasonableness of the rate also proves that the shippers who used the rate found unreasonable paid more than they should have paid; that they are out of pocket just so much; both of which phrases are synonymous with the term "damage." The consignee of a particular shipment is as much a shipper as the consignor. Where it is found that a rate is and has been unreasonable, it follows that either the consignee or the consignor has been damaged. Whether

the one or the other has been damaged depends upon which one of them, the parties to the transportation, bore the unlawful freight charge.

There is as much of an obligation upon this Commission to determine which of the parties to the transportation bore the unlawful freight charge as there is to determine whether the charge assessed violated the legal right to pay only a reasonable rate. An award of reparation can not be made until it is determined that the claimant bore the freight charge declared unlawful. In awarding reparation this Commission acts in lieu of a court, and when so acting its judgment must be founded upon the same sort of evidence as the judgment of a court of law. *Penna. R. R. Co. v. International Coal Co.*, 230 U. S., 184, 204; *New Orleans Board of Trade v. I. C. R. R. Co.*, 29 I. C. C., 32.

In a court of law the written contract of sale would be the best evidence to prove who bore the freight charges. In the contracts here considered, where the sale price is quoted f. o. b. destination, it is specifically stated, as shown in the quotation from one of the contracts, *supra*, that the freight rate is included in that price, and it is provided that the freight shall be paid by the consignee in cash, and the balance, the price of the pig iron at the shipping point, in 30 days. The terms of the contract thus clearly disclose the fact that the consignee has paid to the consignor the price of the pig iron at the shipping point plus an additional amount, which represents the freight charges from that point to destination. To my mind it must be held that under such a contract the consignee has borne the freight charges and is accordingly entitled to the reparation.

The decision of the majority quite clearly recognizes that the consignees have certain rights in this matter, but does not determine what those rights are, for the reason that—

they present no question that is cognizable by this Commission, dealing, as it does, with the legal public obligations of the carrier, which is a stranger to the private contract between consignor and consignee.

The only "legal public obligations of the carrier" here under consideration are its obligations to make reimbursement to the persons who paid and bore the freight charges. It is our duty to determine whether those persons were the consignors or the consignees, and for this purpose the contract between those parties has been offered in evidence. The carrier is "a stranger" to this contract, but it is also a stranger to an assignment from a consignor to a consignee, and we have frequently recognized such an assignment in the award of reparation and such an assignment is specifically recognized in the last sentence of the majority opinion herein.

In this case I think we should not require the carriers to make reparation to the consignors and leave the consignees to seek final adjustment of their rights in further legal proceedings. Both interests are before us and both have submitted to us their claims for reparation. As between those interests our jurisdiction to determine who bore the freight charges is unquestioned and in determining that question it is my opinion that we have as complete power as a court of law. The decision of the majority as a matter of fact leaves the whole issue undecided and instead of making an end of this litigation invites further litigation before another tribunal. I find no justification for such a course either in the letter or the spirit of the act.

40 I. C. C.

No. 8031.
CHRISTY & HUGGINS COMPANY
v.
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY.

Submitted January 13, 1916. Decided June 29, 1916.

Rate charged for the interstate transportation of coal from Whitwell and Orme, Tenn., to Murfreesboro, Tenn., found unlawful. Reparation awarded.

James D. Richardson for complainant.

Edward H. Hart for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a partnership, composed of S. B. Christy, C. B. Huggins, and J. W. Huggins, engaged in the coal and transfer business at Murfreesboro, Tenn. By complaint, filed May 19, 1915, it alleges that the rate of \$1 per net ton charged by defendant for the transportation between February 15, 1914, and January 27, 1915, of various shipments of coal, interstate, from Whitwell and Orme, Tenn., to Murfreesboro, was unreasonable, unjustly discriminatory, and in violation of the long-and-short-haul rule of the fourth section to the extent that it exceeded a rate of 90 cents per net ton contemporaneously maintained by defendant from the same points of origin to Nashville, Tenn., beyond Murfreesboro. Reparation is asked.

Murfreesboro is a local point on the main line of defendant, 31.6 miles southeast of Nashville and directly intermediate to Nashville on traffic from Whitwell and Orme. Whitwell is on the Sequatchie Valley branch of defendant's line running northwest from Bridgeport, Ala. Orme is located on the Orme branch of the same line which runs directly north from the main line at Bridgeport. The distances to Murfreesboro are 113.4 miles from Whitwell and 101.2 miles from Orme. Previous to February 15, 1914, and as far back as August 1, 1901, Murfreesboro and intermediate points had been grouped with Nashville and took the Nashville rate on coal from Whitwell and Orme, which was \$1 per ton. On that date the rate to Nashville was reduced to 90 cents per ton in accordance with our finding in *Traffic Bureau of Nashville, Tenn., v. L. & N. R. R. Co.*, 28 I. C. C., 533. The rate to Murfreesboro and other intermediate points was not reduced, however, and the alleged departure from

the fourth section resulted, for which no authority had been granted. Subsequently to the movement the fourth section departure was corrected.

Complainant's effort to prove the rate charged inherently unreasonable was confined to reference to the Nashville rate. Comparisons were offered by defendant, on the other hand, contrasting the rate assailed with the rate maintained by other carriers on coal for like distance between points in the same and other territories, and intended to show that the rate charged was reasonable. It suffices to say that the rates to the intermediate points which were higher than the rate contemporaneously in effect to Nashville were unlawful.

We find that the rate assailed was unlawful to the extent that it exceeded the rate of 90 cents per ton in effect to Nashville; that complainant made the shipments as described and paid and bore charges thereon at the rate herein found to have been unlawful; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the lawful rate; and that it is entitled to reparation with interest. The exact amount of reparation due can not be determined on the present record, and complainant should prepare a statement showing as to each shipment on which reparation is claimed the date of movement, points of origin and destination, route, weight, car number, and initials, rates applied, charges collected, and the amount of reparation due under our findings herein, which statement should be submitted to defendant for verification. Upon receipt of a statement so prepared by complainant and verified by defendant we will consider the entry of an order awarding reparation.

40 I. C. C.

No. 8014.
PRUSIA HARDWARE COMPANY

v.

**CINCINNATI, HAMILTON & DAYTON RAILWAY
COMPANY ET AL.**

**PORTIONS OF FOURTH SECTION APPLICATIONS Nos.
2045 AND 2060.**

Submitted November 18, 1915. Decided July 8, 1916.

Rate charged for the transportation of a carload of shovels from Piqua, Ohio, to Fort Dodge, Iowa, found to have been unreasonable to the extent that it exceeded the aggregate of the intermediate rates to and from Chicago, Ill. Reparation awarded.

F. W. Knoche for complainant.

A. P. Humburg and *G. B. Winston* for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the hardware business at Fort Dodge, Iowa. By complaint, filed May 13, 1915, it alleges that the rate charged by defendants for the transportation of a carload of shovels from Piqua, Ohio, to Fort Dodge was unreasonable and in violation of the fourth section. Reparation is asked and the establishment of a reasonable rate for the future. Those portions of Fourth Section Applications No. 2045 of the Illinois Central Railroad and No. 2060 of J. F. Tucker, agent, in which authority is sought to continue greater charges for the transportation of shovels from Piqua to Fort Dodge as a through route than on the basis of the aggregate of intermediate rates to and from Chicago, Ill., were set for hearing with the complaint.

The shipment weighed 35,100 pounds and moved March 13, 1914: Cincinnati, Hamilton & Dayton Railway and New York, Chicago & St. Louis Railroad from Piqua to Chicago; Illinois Central Railroad from Chicago through East Dubuque, Ill., to Fort Dodge. Charges were collected in the sum of \$166.72, at a through rate of 47.5 cents per 100 pounds, constructed on the basis of proportional rates to and from East Dubuque: The fifth-class rate of 15.5 cents to East Dubuque and a commodity rate of 32 cents beyond. Appro-

priate tariff references made this combination the specific through rate legally applicable to the traffic.

Complainant contends that the rate applied was unreasonable to the extent that it exceeded 45.5 cents per 100 pounds, which was the aggregate of the intermediate rates on shovels contemporaneously in effect to and from Chicago, which were the fifth-class rate of 13.5 cents to Chicago and a commodity rate of 32 cents beyond. Defendants did not attempt to justify the discrepancy, and by a tariff effective August 30, 1915, the aggregate of the rates to and from Chicago was made applicable if lower than the East Dubuque combination. The present combination rate on shovels from Piqua to Fort Dodge is 46.2 cents per 100 pounds if based on Chicago, and 48.3 cents if based on East Dubuque. The correction of the fourth section departure renders any finding with respect to it unnecessary.

Effective April 1, 1914, the third-class proportional rate which would be applicable on shovels from East Dubuque to Fort Dodge as part of the through rate from Piqua in the absence of a proportional commodity rate was reduced from 32 cents to 23.7 cents. The commodity rate of 32 cents which has continued in effect is now 8.3 cents greater than the present class rate, but there is nothing in the record to show that it is unreasonable as a component of the through rate on shovels from Piqua to Fort Dodge.

We find that the rate charged was unreasonable to the extent that it exceeded the aggregate of the intermediate rates contemporaneously in effect to and from Chicago.

Complainant was allowed 15.5 cents per 100 pounds as a freight allowance by the consignor and a deduction on that basis was made from the invoice price. The allowance was made to equalize the rate on shovels from Piqua to Fort Dodge with the rate of 32 cents per 100 pounds applicable from St. Louis, Mo., where also shovels are manufactured. The record is clear that complainant made the shipment and paid the freight charges as such. To go into the matter of allowances between the parties would lead the Commission away from the direct results of the act of the carrier in the exaction of an unreasonable rate into the domain of indirect and remote consequences and perhaps into questions of equity between the vendor and vendee. As said in *Nicola, Stone & Myers Co. v. L. & N. R. R. Co.*, 14 I. C. C., 199, 209, the reparation is due to the person who has been required to pay the excessive charge as the price of transportation. We are not unmindful of the fact that our conclusion herein differs from that reached in *New England Electric Co. v. C., R. I. & P. Ry. Co.*, 28 I. C. C., 418. We find that complainant has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable

and that it is entitled to reparation with interest. It appears from the invoice and complainant's testimony that about 180 pounds of shovel handles were included in this shipment. The through rate assessed was not applicable on mixed carloads of shovels and shovel handles nor are we advised that either of the intermediate rates permitted such mixtures at a carload rate. For this reason the exact amount of reparation due can not be determined upon this record and the parties should submit a stipulation as to the total weight of each commodity contained in the car, the rates applicable and the charges collectible. Upon receipt of such a stipulation we will consider the entry of an order awarding reparation.

HALL, *Commissioner*, dissents.
40 I. C. C.

No. 8075.
EASTERN SHORE OF VIRGINIA PRODUCE EXCHANGE
v.
NEW YORK, PHILADELPHIA & NORFOLK RAILROAD
COMPANY ET AL.

Submitted December 16, 1915. Decided July 7, 1916.

Upon complaint that rates on potatoes from points on the line of the New York, Philadelphia & Norfolk Railroad in Accomac and Northampton counties, Va., to points in the states of North Carolina, South Carolina, Georgia, Alabama, Florida, Louisiana, and Tennessee are unreasonable and unduly preferential and that no reasonable through routes and joint rates are maintained by defendants; *Held*, That the existing through routes and rates applicable thereto have been shown to be reasonable and nonpreferential. Complaint dismissed.

N. B. Wescott, James E. Heath, and Cadwallader J. Collins for complainant.

R. Walton Moore and Charles D. Drayton for defendants.

REPORT OF THE COMMISSION.

HALL, *Commissioner*:

In our report in Docket No. 8039, *ante*, page 328, we considered the rates on vegetables and berries from points in Accomac and Northampton counties, Va., on the line of the New York, Philadelphia & Norfolk Railroad, to destinations in the west. By its complaint in this proceeding the same complainant alleges that the rates on white and sweet potatoes from the same points of origin to points in the states of North Carolina, South Carolina, Georgia, Alabama, Florida, Louisiana, and Tennessee are unreasonable and unduly preferential. It further alleges that no reasonable through routes and joint rates are maintained by defendants between the points mentioned. The establishment of through routes, and of reasonable and nonpreferential rates applicable thereto, is prayed.

The territory of origin named in the complaint and the carriers serving this territory are sufficiently described in the preceding report, *ante*, pages 329 and 330. The points of destination will be referred to as southeastern territory.

Although complainant asks for the establishment of through routes, it appeared at the hearing that these exist. The only question, there-

fore, is as to the propriety of the rates applied by defendants to this traffic.

Complainant has regarded southeastern territory as a market for potatoes grown in the counties referred to, particularly white potatoes, but it is asserted that the freight rates are so high that a large business has not been and can not be built up. Competition the complainant has found in the territory in question is largely from Norfolk and New Jersey, there being little competition from Baltimore, Philadelphia, or other points.

The rates on both white and sweet potatoes from all stations on the New York, Philadelphia & Norfolk in Accomac and Northampton counties to the same points in this southeastern territory are blanketed and are made by combination of the local rate to Norfolk and the local rate from Norfolk to destination. To Norfolk the traffic moves on a commodity rate, and to many of the points beyond commodity rates apply. Defendants are willing to publish joint rates on the basis of the present combination of rates to and from Norfolk.

Little was shown by complainant in support of its charge that the through rates are unreasonable *per se*, except the fact that they are the sum of the local rates to and from Norfolk.

The lines leading south from Norfolk do not publish joint class or commodity rates from stations on the New York, Philadelphia & Norfolk. The rates in question are, therefore, on the usual basis.

Prior to February 23, 1915, the rate on potatoes of both kinds from the eastern shore points named in the complaint to Norfolk was 20 cents per barrel, any quantity, applicable to both state and interstate shipments. On that date the interstate rate was increased to 21 cents, following *The Five Per Cent Case*, 32 I. C. C., 325. No similar increase has as yet been allowed by the Virginia Corporation Commission, but that commission has investigated and approved the rate of 20 cents.

The estimated weight per barrel of white potatoes is 175 pounds and of sweet potatoes 155 pounds. The barrel rate is, therefore, equivalent to a rate of 12 cents per 100 pounds on white potatoes and of 13.5 cents on sweet potatoes.

In official classification territory potatoes of both kinds are rated fifth class in carloads. From these stations on the New York, Philadelphia & Norfolk the fifth-class rate on traffic to Norfolk ranges from 14.7 cents to 17.7 cents per 100 pounds. It was testified for defendants that the rate of 21 cents per barrel, any quantity, to Norfolk was established to meet competition from boat lines operating along the eastern shore of Virginia.

Traffic to southeastern territory from points between Newport News and Richmond on the Chesapeake & Ohio, as well as from

points on the Virginian Railway and the Norfolk Southern, moves through Norfolk, and the rates are made by combination of the local rates to and from Norfolk. Rates to Norfolk on potatoes from points on these lines are shown in the following table, together with the rate from the stations named in the complaint. Throughout this report rates are stated in cents per 100 pounds, except as otherwise noted.

From—	Distance (miles).	Rate.	
		C. L.	L. C. L.
.....	37	8	13
.....	49	10	13
.....	66	11	14
.....	67	13	16
.....	72	13	16
.....	85	14	18
.....	95	16	18
.....	37	18	18
.....	42	19	15
.....	55	11	16
.....	61	11	17
.....	74	13	12
.....	81	13	19
.....	92	13	20
.....	49	20	20
.....	53	20	20
.....	61	22	22
.....	71	23	23
.....	84	22	22
.....	95	25	25
Stations: Cape Charles to New Church, inclusive.....	105	21	21

¹ Per barrel crate.

² Average distance.

The general basis of rates on both kinds of potatoes, in carloads, from Norfolk to destinations in the south is sixth class. To many of the destinations, however, commodity rates apply which are lower than the sixth-class rates. Defendants insist that the rates from Norfolk to destinations in the south are abnormally low. Since the hearing in this case some of these rates have been increased and others decreased as a result of the discrimination found in *Fourth Section Violations in the Southeast*, 30 I. C. C., 153. The rates published to comply with our order in that case became effective January 1, 1916. The carload rates on both kinds of potatoes from Norfolk to various points in southeastern territory in effect prior to January 1, 1916, those in effect since that date, and those in effect from Cincinnati, Ohio, to the same destinations, both before and since January 1, 1916, are shown in the following table. The distances given are taken from an exhibit filed by defendants.

40 I. C. C.

To—	Carload rates from Norfolk.			Carload rates from Cincinnati.		
	Distance.	Before Jan. 1, 1916.	On and after Jan. 1, 1916.	Distance.	Before Jan. 1, 1916.	On and after Jan. 1, 1916.
	<i>Miles.</i>			<i>Miles.</i>		
Anniston, Ala.....	701	31	38	478	32	38
Birmingham, Ala.....	764	31	38	479	32	38
Gadsden, Ala.....	729	31	38	427	32	38
Mobile, Ala.....	951	41	39	750	33	34
Montgomery, Ala.....	772	31	38	605	35	38
Selma, Ala.....	822	31	38	588	35	38
Opelika, Ala.....	706	31	41	583	39	42
Albany, Ga.....	680	35	38	661	41	44
Americus, Ga.....	650	35	38	631	41	44
Athens, Ga.....	524	31	35	547	35	40
Atlanta, Ga.....	597	31	35	474	35	38
Augusta, Ga.....	456	22	27	645	35	38
Columbus, Ga.....	680	31	36	577	39	42
Macon, Ga.....	581	31	35	561	35	38
La Grange, Ga.....	668	31	38	530	50	42
Rome, Ga.....	671	31	35	414	35	38
West Point, Ga.....	684	31	41	561	39	42
New Orleans, La.....	1,090	43	39	834	33	34
Albemarle, N. C.....	351	25	25	581	29	29
Charlotte, N. C.....	349	25	25	555	29	29
Durham, N. C.....	172	21	21	586	25	25
Fayetteville, N. C.....	207	20	20	663	29	29
Gastonia, N. C.....	385	31	31	533	38	38
Greensboro, N. C.....	270	21	21	584	25	25
High Point, N. C.....	286	24	24	600	28	28
Monroe, N. C.....	324	25	25	579	29	29
Raleigh, N. C.....	175	21	21	639	25	25
Salisbury, N. C.....	320	25	25	550	29	29
Shelby, N. C.....	410	33	33	505	41	41
Winston-Salem, N. C.....	299	21	21	578	25	25
Anderson, S. C.....	507	31	31	543	38	38
Columbia, S. C.....	378	31	27	573	38	38
Greenville, S. C.....	461	31	31	506	38	38
Greenwood, S. C.....	443	31	31	566	38	38
Laurens, S. C.....	425	31	31	518	38	38
Spartanburg, S. C.....	439	31	31	479	38	38
Chattanooga, Tenn.....	650	31	35	336	26	28
Greeneville, Tenn.....	465	37	40	354	29	33
Jackson, Tenn.....	954	46	52	420	33	33
Johnson City, Tenn.....	433	37	34	386	29	33
Knoxville, Tenn.....	539	37	34	280	26	28
Memphis, Tenn.....	960	35	34	494	26	27
Morristown, Tenn.....	497	37	34	322	29	33
Nashville, Tenn.....	755	38	33	300	20	21

In support of their contention that the rates from Norfolk are upon an unusually low basis the defendants cite the rates from Cincinnati. Various other rates were referred to for the same purpose, and the showing made by such comparisons is similar.

The present rates on white potatoes from stations on the New York, Philadelphia & Norfolk to representative destinations in southeastern territory, the average distance and the ton-mile, car, and car-mile earnings, are shown in the following table. Owing to the difference in the estimated weights per barrel of sweet and white potatoes the through rates on sweet potatoes are slightly higher.

To—	Distance.	Rate.	Earnings per ton- mile.	Earnings per car.	Earnings per car- mile.
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>		<i>Cents.</i>
Birmingham, Ala.....	829	50	12.1	\$150	18
Atlanta, Ga.....	662	47	14.2	141	21
West Point, Ga.....	749	53	14.2	150	21
New Orleans, La.....	1,155	51	8.8	153	13
Greensboro, N. C.....	335	33	19.7	99	29
Shelby, N. C.....	475	45	18.9	135	28
Columbia, S. C.....	443	39	17.6	117	26
Spartanburg, S. C.....	504	43	17.1	129	20
Chattanooga, Tenn.....	715	47	13.1	141	20
Knoxville, Tenn.....	604	46	15.2	138	23
Nashville, Tenn.....	820	45	11	135	16

We are of opinion and find that the rates assailed are reasonable. Complainant urges that inasmuch as the Norfolk rate applies from Newport News, West Point, Roanoke, and Lynchburg, Va., the same rate should be extended to Cape Charles.

In *Chamber of Commerce of Newport News v. S. Ry. Co.*, 23 I. C. C., 345, we found that the maintenance of rates from Norfolk to points south and west thereof lower than were contemporaneously maintained from Newport News to the same points was unduly prejudicial to the latter. To comply with our order in that case defendants published rates from Newport News which were the same as those then in effect from Norfolk. From Newport News, as from Cape Charles, the service to Norfolk is by car floats and barges. The distance from Cape Charles is 36 miles and from Newport News 12 miles.

West Point is the eastern terminus of the Southern Railway's Richmond division. There is active water competition to and from West Point, and it has always taken the same rates as Norfolk, Roanoke, Lynchburg, and other so-called "Virginia cities." From Roanoke and Lynchburg as well as from West Point the traffic moves all rail and to many of the destinations in southeastern territory, as, for instance, Atlanta, by one-line haul over the Southern.

Complainant also refers to the rates on potatoes from Freehold, N. J., Baltimore, Md., and stations on the Pennsylvania system from Philadelphia to Delmar, Del. At the time of the hearing the rates from all these points to nearly all destinations in the southeast were slightly lower than from points on the New York, Philadelphia & Norfolk.

Defendants explained that this adjustment was the result of water competition to south Atlantic ports, and the low scales of rates applicable thence to interior points. On traffic from north of Wilmington, Del., the rates deviated from the long-and-short-haul rule of the fourth section. It was said for defendants that these departures would be corrected by the rates to be published in compliance with

our order in *Fourth Section Violations in the Southeast, supra.* But the tariffs which became effective January 1, 1916, still show some rates from more distant points which are lower than rates from points on the New York, Philadelphia & Norfolk. The applications covering these departures were not set for hearing in connection with this case and can not be disposed of here.

It is clear from the record that transportation conditions affecting traffic from the points cited are different from those which attend shipments from the eastern shore of Virginia. In the light of these conditions we find that the rates under review are not unduly preferential.

The present rate to Norfolk is established upon a package basis, while the rates south from Norfolk are generally published per 100 pounds. It would seem desirable that the through rates be published upon a common basis, and defendants will be expected to establish joint rates on the basis of the combination of rates now in effect to and from Norfolk.

The complaint will be dismissed.

CASES DISPOSED OF BY THE COMMISSION WITHOUT PRINTED REPORT DURING THE TIME COVERED BY THIS VOLUME.

5013. **IN RE RATES, PRACTICES, RULES, AND REGULATIONS GOVERNING THE TRANSPORTATION OF CEMENT, IRON ORE, IRON AND STEEL AND THEIR PRODUCTS.** Investigation instituted by the Commission on its own motion, June 10, 1912. Order of investigation vacated and set aside, July 5, 1916.

5366. **MESKER & Co. v. I. C. R. R. Co. ET AL.** Rates on shipment of two steel beams, and one bundle of separators, bolts, and rosettes, from Evansville, Ind., to Magnolia, Ark. *W. J. Stumpf* for complainant. *R. W. Moore, H. G. Herbel, F. G. Wright,* and *S. S. Senne* for defendants. Dismissed for want of prosecution, June 21, 1916.

5628. **CUDAHY PACKING Co. v. SIOUX CITY TERMINAL RY. Co.** Legality of collecting demurrage charges at Sioux City, Iowa, on shipments of various commodities from points outside of Iowa. *Cassoday, Butler, Lamb & Foster* for complainant. *W. Milchrist* for defendant. Dismissed on request of complainant, June 12, 1916.

5629. **CUDAHY PACKING Co. v. UNION STOCK YARDS Co. OF OMAHA, LTD.** Assessment of demurrage charges on various shipments of miscellaneous commodities, at South Omaha, Nebr. *Cassoday, Butler, Lamb & Foster* for complainant. No appearance for defendant. Dismissed on request of complainant, June 12, 1916.

8088. **STEINFELD & Co. v. S. P. Co. ET AL.** Rates on cornmeal and flour from Struble, Iowa, and points in Kansas and Nebraska to Tucson, Ariz. *Bishop & Bahler* for complainant. *G. D. Squires, E. W. Camp,* and *G. H. Baker* for defendants. Dismissed on request of complainant, June 12, 1916.

8379. **MINNESOTA & ONTARIO POWER Co. v. B. F. & I. F. RY. Co. ET AL.** Rates on news print paper from International Falls, Minn., to various points in C. F. A. territory. *B. G. Dahlberg* for complainant. *J. B. Sheean, C. Donnelly, C. C. Wright, R. H. Widdicombe, A. H. Lossow, R. B. Scott, O. W. Dynes, D. L. Gray, T. H. Burgess, M. B. Pierce, C. E. Dewey, E. S. Ballard, O. E. Butterfield, J. J. Koch,* and *L. E. Hinkle* for defendants. Dismissed on request of complainant, June 5, 1916.

8392. **CULLMAN COMMERCIAL CLUB v. L. & N. R. R. Co.** Rates on compressed cotton in bales from Cullman, Ala., to Cincinnati, Ohio. *E. Ahlrichs* for complainant. *W. A. Northcutt* for defendant. Dismissed on request of complainant, June 12, 1916.

8433. **OKLAHOMA PETROLEUM & GASOLINE Co. v. C., R. I. & P. RY. Co. ET AL.** Rate on gasoline from Memphis, Tenn., to Bowling Green, Ky., originating at Muskogee, Okla. *E. N. Adams* for complainant. *J. G. Kerr, jr.,* for L. & N. R. R. Co. Dismissed on request of complainant, June 12, 1916.

8643. **FARGO MERCANTILE Co. v. N. P. RY. Co.** Rates on sugar from Billings, Mont., to Fargo, Dickinson, and Jamestown, N. Dak. *O. W. Tong* for complainant. *D. F. Lyons* for defendant. Dismissed on request of complainant, June 12, 1916.

8684. **BRETTON WOODS Co. v. B. & M. R. R.** Switching charges on coal from Fabyans, N. H., to Bretton Woods, N. H., originating at Portland, Me. *Martin & Howe* for complainant. *W. A. Cole* for defendant. Dismissed without prejudice, on request of complainant, June 12, 1916.

8750. **ALEXANDRIA COOPERAGE & LUMBER Co. v. C., R. I. & P. Ry. Co. ET AL.** Rates on hardwood logs from Alexandria to Pineville, La., originating on the lines of the other defendants, and milled in transit at Pineville; and on finished cooperage and lumber from Pineville to Alexandria, destined to points on other defendants' lines, etc. *H. J. Fernandez* for complainant. *E. C. D. Marshall, B. S. Atkinson, F. H. Wood, Denegre, Leovy & Chaffe, T. J. Freeman, G. Thompson, H. G. Herbel, and F. G. Wright* for defendants. Dismissed on request of complainant, June 22, 1916.

8823. **GUND BREWING Co. (INC.) v. C., M. & St. P. Ry. Co.** Rates on empty beer packages from Missoula and Roundup, Mont., to La Crosse, Wis. *S. J. Bolton* and *W. W. West* for complainant. *O. W. Dynes* for defendant. Dismissed on request of complainant, June 12, 1916.

8856. **AVEY CHEMICAL Co. v. B. & M. R. R. ET AL.** Rate on dyestuffs from Lowell, Mass., to Lanett, Ala., on account of alleged misrouting. *S. E. Faithfull* for complainant. *W. A. Cole, J. T. Barker, and R. W. Moore* for defendants. Dismissed on request of complainant, June 12, 1916.

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REPARATION GRANTED UNDER SUPPLEMENTAL ORDERS OF THE COMMISSION DURING THE TIME COVERED BY THIS VOLUME.

8052. HAARMANN VINEGAR & PICKLE Co. *v.* C., R. I. & P. Ry. Co. *ET AL.* June 12, 1916. Reparation for \$202.36 on shipments of cull and windfall apples from Troy, Kans., to Pawnee, Nebr., on account of unreasonable charges.

6812 and 6812 (Sub-Nos. 1 to 4). PACIFIC MOTOR SUPPLY Co. *v.* A., T. & S. F. Ry. Co. *ET AL.*; WHITESELL *v.* C., B. & Q. R. R. Co. *ET AL.*; CHURCH *v.* A., T. & S. F. Ry. Co. *ET AL.*; RISDEN *v.* A., T. & S. F. Ry. Co. *ET AL.*; KUPFER Co. *v.* A., T. & S. F. Ry. Co. *ET AL.* Appeal Manufacturing & Jobbing Co., intervener. June 12, 1916. Reparation for \$8,016.50 on shipments of motorcycles from Aurora and Chicago, Ill., Detroit, Mich., Milwaukee, Wis., Middletown and Wagon Works, Ohio, and Armory, Mass., to Los Angeles, San Francisco, and San Diego, Cal., on account of unreasonable charges.

6079. KORRICK *v.* A., T. & S. F. Ry. Co. *ET AL.* June 12, 1916. Reparation for \$305.41 on l. c. l. shipments of merchandise from points east of Chicago, Ill., to Phoenix, Ariz., on account of unreasonable charges.

5484. ENNS MILLING Co. *v.* C., R. I. & P. Ry. Co. *ET AL.* June 12, 1916. Reparation for \$1,447.19 on shipments of flour, bran, and shorts from Inman, Kans., to various points in Missouri, on account of unreasonable charges.

4875. LILL & Co. *ET AL.* *v.* C., M. & St. P. Ry. Co. *ET AL.* June 12, 1916. Reparation for \$12,828.47 on interstate shipments of coal from Galewood, Ill., to Edgewater, Ill., on account of unreasonable charges.

2713. MICHIGAN HARDWOOD MANUFACTURERS ASSO. *ET AL.* *v.* TRANSCONTINENTAL FREIGHT BUREAU *ET AL.* June 21, 1916. Reparation for \$1,703.08 on shipments of hardwood lumber from South Boardman, Detroit, and other Michigan points to Vancouver, British Columbia, and points in Washington, Oregon, and California, on account of unreasonable charges.

7556. EAGLE ICE Co. *ET AL.* *v.* C., M. & St. P. Ry. Co. *ET AL.* June 22, 1916. Reparation for \$44,755.22 on shipments of ice from various points in Wisconsin to Chicago, Ill., on account of unreasonable charges.

7320. SPOKANE CYCLE & SUPPLY Co. *ET AL.* *v.* B. & A. R. R. Co. *ET AL.* June 22, 1916. Reparation for \$1,831.05 on shipments of motorcycles, l. c. l. from eastern points to Spokane and Colville, Wash., on account of unreasonable charges.

6375. OMAHA BICYCLE Co. *ET AL.* *v.* C. & N. W. Ry. Co. *ET AL.* June 22, 1916. Reparation for \$99.33 on l. c. l. shipments of motorcycles from points in Massachusetts, Illinois, and Michigan to Omaha and Genoa, Nebr., on account of unreasonable charges.

5885. GULF LUMBER Co. *v.* MORGAN'S LOUISIANA & TEXAS R. R. & S. S. Co. *ET AL.* June 22, 1916. Reparation for \$304.47 on shipments of lumber from Fullerton, La., to Texas City, Tex., destined to New York, N. Y., via coastwise steamship lines, on account of unreasonable charges.

760 REPARATION GRANTED UNDER SUPPLEMENTAL ORDERS.

4262 and 4004. IN THE MATTER OF UNREASONABLE RATES AND PRACTICES IN THE TRANSPORTATION OF LIVE STOCK, PACKING-HOUSE PRODUCTS, AND FRESH MEATS. CORPORATION COMMISSION OF OKLAHOMA v. A. & S. RY. Co. ET AL. June 22, 1916. Reparation for \$8,263.21 to various claimants on shipments of packing-house products, fresh meats, and live stock from points in Oklahoma, Kansas, and Texas to various destinations, on account of excessive rates.

NOTE.—The amount of reparation awarded in above cases aggregates \$79,756.29.

40 I. O. C.

TABLE OF COMMODITIES.

Acid, sulphuric:

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Louviers, Colo., to Port Arthur, Tex., 529.

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Bagging, scrap. Columbus, Ga., to Cincinnati and Lockland, Ohio, 506.

Bags, burlap. California to Globe, Ariz., 573.

Balusters. Bristol, Tenn.-Va., to Passaic, N. J., 69.

Bananas. Tulsa, Okla., from New Orleans, La., and Galveston, Tex., 9.

Beans. Los Angeles, Cal., to Globe, Ariz., 573.

Berries. Cape Charles and other points on the eastern shore of Virginia, to Ohio, Indiana, Michigan, Illinois, Missouri, Wisconsin, and Iowa, 328.

Billets. Paducah, Ky. Switching charges, 612.

Bolts, rough stave. Arkansas to Bucoda and Paulding, Mo., 397.

Bolts, stave. Louisiana to Whiteville, La., milled and reshipped to Constable Hook, N. J., 165.

Bolts, wood. Paducah, Ky. Switching charges, 612.

Bottles, empty. Minnesota to Sheldon, Iowa, 527.

Brick. Roseville, Ohio, to Huntington, W. Va., 669.

Brooms (sample). Portland, Oreg., to and from Washington, Idaho, and Montana, 167.

Building material. Bristol, Tenn.-Va., to Passaic, N. J., 69.

Bulls. Minimum weights and basic values, 347.

Butter. Minneapolis, Minn., to Providence, R. I., 45.

Buttermilk. New England. Rates, rules, and practices for transportation of, 699.

Butts, iron. Harvard, Ill., to C. F. A. territory, 67.

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Cabinets, clothing. Classification, 484.

Cabinets, medicine. Bristol, Tenn.-Va., to Passaic, N. J., 69.

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Canned goods. Globe, Ariz., from Los Angeles, Cal., and Chicago, Ill., 573.

Cards, postal. Washington, D. C., to various destinations; classification, 405.

Cars, refrigerator. Oregon, Washington, and Montana to various destinations; rental charges, 191.

Cases, sample broom. Portland, Oreg., to and from Washington, Idaho, and Montana, 167.

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Castings. East Moline, Ill. Demurrage, 533.

Cattle, range. Monahans, Tex., to Gillette, Wyo., reconsigned in transit to Fountain, Colo., 658.

Cement:

Ada, Okla., to Texas, 94.

St. Louis, Mo., to Huttig, Ark., 661.

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40 I. C. C.

Cheese:

Marshfield, Wis., to Pensacola, Fla., re-iced at Montgomery, Ala., 173.

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Class rates:

Chicago, Ill., to Torrington, Wyo., 512.

Nebraska from and to Council Bluffs and Sioux City, Iowa, Kansas City and St. Joseph, Mo., and Atchison, Kans., 201.

Ohio River crossings and Portsmouth, Ohio, to Norfolk, Va., destined to Charleston, S. C., 382.

Virginia cities to North Carolina, 24.

Class and commodity rates:

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Tulsa, Okla., from New Orleans, La., and Galveston, Tex., 9.

Clay. Florida to Ohio and West Virginia, and Canonsburg, Pa., 275.

Coal:

Bolivar, Pa., to Hudson Upper, N. Y., reconsigned at Stuyvesant Falls, N. Y., 4.

Chicago, Ill., to Oakdale, Cal., 175.

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Plymouth Junction, Pa., to Sharon, Ill., 88.

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Coal, bituminous:

Alabama mines to Memphis and other points in Tennessee, Mississippi, Louisiana, and Texas, 311.

Bon Air and other Tennessee points to Georgia, 180.

Illinois and Indiana mines to Illinois, Indiana, Wisconsin, and Michigan, 603.

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St. Clare, Ind., to Chicago, Ill., reconsigned in transit at Faithorn, Ill., 543.

Coconuts. Tulsa, Okla., from New Orleans, La., and Galveston, Tex., 9.

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Combings, wool. Chicago, Ill., to Wisconsin, Minnesota, and Iowa, 101.

Commodity rates:

Eastern territory to Pacific coast terminals, 35.

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La Moure and Berlin, N. Dak., from Detroit, Mich., Nashville, Tenn., Richmond, Ind., and Chicago, West Pullman, and Joliet, Ill., 308.

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St. Louis, and Kansas City, Mo., to Dallas, Fort Worth, and other points in north-eastern Texas, 619.

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Iowa to Council Bluffs, destined to Missouri, Kansas, Arkansas, and Texas, 73.

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Cotton piece goods:

Augusta, Ga., to Patwucket, R. I., and Sandersdale, Mass., 501.

New England to Rockford and Kentmere, Del., and points in the middle Atlantic states, 411.

Cotton, refuse. Columbus, Ga., to Cincinnati and Lockland, Ohio, 506.

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- Cows. Minimum weights and basic values, 347.
- Crackers. Kansas City, Kans., to Globe, Ariz., 573.
- Cream. New England. Rates, rules, and practices for transportation of, 699.
- Culverts, plate-iron. Fargo, N. Dak., to Arnegard, N. Dak., 537.
- Desks. High Point, N. C., to Spokane, Wash., 517.
- Doors. Bristol, Tenn.-Va., to Passaic, N. J., 69.
- Drums, second-hand iron and steel. Dallas, Tex., from Chicago, Kansas City, and Atlanta, 594.
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- Enamel ware, burned. Pittsburgh, Pa. Demurrage and track-storage charges, 84.
- Envelopes, stamped. Dayton, Ohio, to various destinations; classification, 405.
- Explosives, high. Los Angeles, Cal., to Globe, Ariz., 573.
- Feed. Milwaukee, Wis., to Dayton, Va., reconsigned to Bridgewater, Va., 552.
- Feed, animal and poultry. New Orleans, La., to Carolina territory, 654.
- Fertilizer. Mount Pleasant, Tenn., to Purvis, Richburg, and Petal, Miss., 698.
- Fish, pickled and salted. Los Angeles, Cal., to Globe, Ariz., 573.
- Fixtures, store. Classification, 484.
- Flour:
- Cairo, Ill., to Port Chalmette, La., for export, 20.
 - Hutchinson and other Kansas points to New Mexico, 160.
 - Milwaukee, Wis., to Dayton, Va., reconsigned to Bridgewater, Va., 552.
 - Milwaukee, Wis., to Vienna, Va., reconsigned to Leesburg, Va., 615.
 - New York harbor. Storage charges, 265.
- Forest products. Laona, Wis., to C. F. A. territory, and New York, Pennsylvania, West Virginia, and Kentucky, 111.
- Frames, show case. Classification, 484.
- Fruit:
- Los Angeles, Cal., to Globe, Ariz., 573.
 - Texas to various destinations, 673.
- Fruits, citrus. New Orleans, La., to Tulsa, Okla., 9.
- Fruits, dried. Los Angeles, Cal., to Globe, Ariz., 573.
- Furniture:
- Chicago, Ill., to Globe, Ariz., 573.
 - St. Louis, Mo., to Huttig, Ark., 661.
- Furniture, fiber. Jackson, Mich., to various destinations; classification, 503.
- Furniture, store. Classification, 484.
- Garlic, dried. New York, N. Y., to Seattle, Wash., 17.
- Glasses, jelly. Sand Springs, Okla., to Pacific coast terminals, 291.
- Goats. Minimum weights and basic values, 347.
- Grain:
- Arkansas from Kansas and Missouri, 49.
 - Atchinson and Leavenworth, Kans. Transit arrangements, 358.
 - Gulf ports from Oklahoma, Kansas, Missouri, Iowa, and Nebraska, for export, 280.
 - Illinois to Chicago, reshipped to various destinations, 124.
 - New Orleans, La., to Carolina territory, 654.
- Grain products:
- Atchison and Leavenworth, Kans. Transit arrangements, 358.
 - Gulf ports from Oklahoma, Kansas, Missouri, Iowa, and Nebraska, for export, 280.
 - Missouri River cities to Norfolk and Newport News, Va., for export, 195.
- Granite. Barre, Vt., to Hillside, Ill., 77.
- Gravel. Burlington, Wis., to Chicago, Ill., 90.
- Hangers, barn door. Harvard, Ill., to C. F. A. territory, 67.
- 40 I. C. C.

- Hay. Baltimore, Md. Demurrage, 618.
- Hides, green salted. Springfield, Ohio, to Chicago, Ill., and Milwaukee, Wis., 305.
- Hinges. Harvard, Ill., to C. F. A. territory, 67.
- Hogs. Sioux City, Iowa, to East St. Louis, Ill., 609.
- Hogs, fat and stock. Minimum weights and basic values, 347.
- Horses. Minimum weights and basic values, 347.
- Hounds, oak wagon. Mocksville, N. C., to Woodstock, Ont., 157.
- Implements, agricultural:
- New York to New England, and Quebec, Canada, 395.
- St. Louis, Mo., to Globe, Ariz., 573.
- Iron articles. Harvard, Ill., to C. F. A. territory, 67.
- Iron, bar. Pittsburgh, Pa., to Globe, Ariz., 573.
- Iron, pig:
- Alabama and Tennessee to C. F. A. territory, 738.
- Chattanooga, and Boyce, Tenn., from Ironaton and Shelby, Ala., 146.
- Iron, scrap. Houston, Tex., to Chicago, Ill., 525.
- Jacks. Minimum weights and basic values, 347.
- Jars, glass fruit. Sand Springs, Okla., to Pacific coast terminals, 291.
- Jennies. Minimum weights and basic values, 347.
- Jute, refuse. Columbus, Ga., to Cincinnati and Lockland, Ohio, 506.
- Lambs. Minimum weights and basic values, 347.
- Lamp reflectors. *See* Reflectors.
- Lard substitute:
- Louisiana from Ivorydale and St. Bernard, Ohio, Kansas City, Mo., and Kansas City, Kans., 367.
- Macon, Ga., to Louisiana, 373.
- Lemons. New York, N. Y., to Seattle, Wash., 17.
- Lime, phosphate of. Chicago Heights, Ill., to Denver, Colo., 610.
- Live stock:
- Minimum weights and basic values, 347.
- Nashville, Tenn. Free delivery, 134.
- New Albany, Miss., to East St. Louis, Ill., 695.
- Sioux City, Iowa, from Minnesota and South Dakota, 418.
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- Logs:
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- Lumber:
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- Atlantic City and Trenton, N. J., and Wilmington, Del., from Dooling, Ga., Embree, S. C., and Denton, N. C., 549.
- Baltimore, Md., to Grayland, Ill., 151.
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Lumber, rough. Bristol, Tenn.-Va., to Passaic, N. J., 69.

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Machines, addressing. Chicago, Ill., to Spokane, Wash., 517.

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Oats, rolled. Keokuk, Iowa, to Denver and Pueblo, Colo., 531.

Oil. Omaha, Nebr., to Torrington, Wyo., 512.

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Oil, crude cottonseed. South Carolina to Boston, Mass., refined in transit at Charlotte, N. C., 93.

Oil, refined. California to Globe, Ariz., 573.

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Steel, bar. Pittsburgh, Pa., to Globe, Ariz., 573.

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Memphis, Tenn., to Huttig, Ark., 661.

Steers. Minimum weights and basic values, 347.

Stoves. St. Louis, Mo., to Huttig, Ark., 661.

Strawberries. Cape Charles and other points on the eastern shore of Virginia, to Ohio, Indiana, Illinois, Michigan, Wisconsin, Missouri, and Iowa, 328.

Sugar:

Los Angeles, Cal., to Globe, Ariz., 573.

New Orleans, La., to Tulsa, Okla., 9.

Sweepings, cotton factory. Augusta, Ga., to Pawtucket, R. I., and Sandersdale, Mass., 501.

Tallow, inedible. Cincinnati, Ivorydale, and St. Bernard, Ohio, from Arkansas, Louisiana, Texas, Missouri, and Oklahoma, 121.

Tank bottoms. Cincinnati, Ivorydale, and St. Bernard, Ohio, from Arkansas, Louisiana, Texas, Missouri, and Oklahoma, 121.

Ties, cross and switch. Evansville, Ind., and Louisville, Ky., from Tennessee and Kentucky, 377.

Tracks, barn-door hanger. Harvard, Ill., to C. F. A. territory, 67.

Twine. Auburn, N. Y., to New England, and Quebec, Canada, 395.

Valves, iron. Pittsburgh, Pa., to Bremerton, Wash., and San Francisco, Cal., 105.

Vegetables:

Cape Charles and other points on the eastern shore of Virginia, to Ohio, Indiana, Illinois, Michigan, Wisconsin, Missouri, and Iowa, 328.

Texas to various points, 673.

Wagons, farm. Kenosha, Wis., to Globe, Ariz., 573.

Wheat:

East St. Louis, Ill., to Cairo, Ill., milled and reshipped to Port Chalmette, La., for export, 20.

Milwaukee, Wis., to Vienna, Va., reconsigned to Leesburg, Va., 615.

Wheels, electric locomotive. Phildia, Iowa, to Chicago, Ill., 675.

Wool combings. *See* Combings.

Wool, scoured, washed, or combed. Chicago, Ill., to Wisconsin, Minnesota, and Iowa, 101.

Wrappers, stamped newspaper. Dayton, Ohio, to various destinations; classification 405.

Yarn, lath and fodder. New York to New England, and Quebec, Canada, 395.

Yearlings. Minimum weights and basic values, 347.

40 I. C. C.

TABLE OF LOCALITIES.

Accomac county, Va., to Ohio, Indiana, Michigan, Illinois, Missouri, Wisconsin, and Iowa. Vegetables and berries, 328.

Accomac county, Va., to southeastern territory. Potatoes, 750.

Ada, Okla., to Texas. Cement, 94.

Akron, Ohio, to Chicago, Ill. Sewer pipe, 177.

Alabama to Avondale, Ala., milled and reshipped to various destinations. Lumber, 82.

Alabama to C. F. A. territory. Pig iron, 738.

Alabama from eastern shore of Virginia. Potatoes, 750.

Alabama to Nashville, Tenn., reshipped to points north of the Ohio and Potomac Rivers. Hardwood lumber, 59.

Alabama mines to Memphis and other points in Tennessee, Mississippi, Louisiana, and Texas. Bituminous coal, 311.

Albuquerque, N. Mex., from Hutchinson, Kans. Flour, 160.

Alexandria, La., from Alabama mines. Bituminous coal, 311.

Amarillo, Tex., from Oregon, Washington, Idaho, Montana, and western Canada. Lumber and lumber products, 387.

Arizona from California and eastern points. Commodity rates, 573.

Arkansas. Milling-in-transit on logs, 597.

Arkansas from Alabama mines. Bituminous coal, 311.

Arkansas to Bucoda and Paulding, Mo. Lumber and rough stave bolts, 397.

Arkansas to Cincinnati, Ivorydale, and St. Bernard, Ohio. Cottonseed oil, soap stock, tank bottoms, and inedible tallow, 121.

Arkansas from Council Bluffs, Iowa, originating at other Iowa points. Corn, 73.

Arkansas from Gulf ports. Molasses, 435.

Arkansas from Kansas and Missouri. Grain, 49.

Arkansas to various destinations. Clean rice, 285.

Arkansas from Witteville, Okla. Coal, 459.

Arnegard, N. Dak., from Fargo, N. Dak. Plate-iron culverts, 537.

Ashtabula, Ohio, to and from Port Maitland, Ont. Car-ferry service, 143.

Assiniboia, Saskatchewan, Canada, to Warren, Minn. Oats, 22.

Atchison, Kans. Transit arrangements on grain and products from Omaha and South Omaha, Nebr., and Council Bluffs, Iowa, reshipped to Mississippi River and points east of, 358.

Atchison, Kans., from Council Bluffs, Iowa, originating at other points in Iowa. Corn, 73.

Atchison, Kans., to and from Nebraska. Class rates, 201.

Atlanta, Ga., to Dallas, Tex. Secondhand iron and steel drums, 594.

Atlanta, Ga., from eastern shore of Virginia. Potatoes, 750.

Atlanta, Ga., from Tennessee. Coal, 180.

Atlantic City, N. J., from Dooling, Ga. Lumber, 549.

Atlantic ports from Louisiana. Clean rice, 285.

Auburn, N. Y., to New England, and Quebec, Canada. Fodder yarn, lath yarn, rope, twine, and agricultural implements, 395.

40 L. C. C.

- Augusta, Ga., to Pawtucket, R. I., and Sandersdale, Mass. Cotton piece goods and cotton-factory sweepings, 501.
- Auxvase, Mo., from Omaha and South Omaha, Nebr., and Council Bluffs, Iowa. Corn and oats, 523.
- Avondale, Ala., from other Alabama points, reshipped to various destinations. Lumber, 82.
- Baltimore, Md. Demurrage on hay, 618.
- Baltimore, Md., to Grayland, Ill. Contractors' outfits, lumber, and structural steel, 151.
- Barre, Vt., to Hillside, Ill. Granite monuments and parts, 77.
- Baton Rouge, La., from Alabama mines. Bituminous coal, 311.
- Beaudette, Minn., to Sheboygan, Wis., and Belvidere, Ill. Lumber, 283.
- Beaumont, Tex., from Alabama mines. Bituminous coal, 311.
- Beaumont, Tex., to Globe, Ariz. Rice, 573.
- Beggs, La., to Whiteville, La., milled and reshipped to Constable Hook, N. J. Stave bolts, 165.
- Belvidere, Ill., from Beaudette, Minn. Lumber, 283.
- Benton, Ark., to Memphis, Tenn. Yellow-pine lumber, 515.
- Berlin, N. Dak., from Detroit, Mich., Nashville, Tenn., Richmond, Ind., Chicago, West Pullman, and Joliet, Ill. Commodity rates, 308.
- Billings, Mont., from eastern territory. Commodity rates, 517.
- Birmingham, Ala. Demurrage on lumber from Alabama, milled at Avondale, Ala. and reshipped to various destinations, 82.
- Birmingham, Ala., from eastern shore of Virginia. Potatoes, 750.
- Bolivar, Pa., to Hudson Upper, N. Y., reconsigned at Stuyvesant Falls, N. Y. Coal, 4.
- Bon Air, Tenn., to Georgia. Bituminous coal, 180.
- Boston, Mass., from South Carolina, refined in transit at Charlotte, N. C. Crude cottonseed oil, 93.
- Boyce, Tenn., from Ironaton and Shelby, Ala. Pig iron, 146.
- Bremerton, Wash., from Pittsburgh, Pa. Iron valves, 105.
- Bridgewater, N. C., to New York, N. Y. Lumber, 63.
- Bridgewater, Va., from Milwaukee, Wis., reconsigned at Dayton, Va. Flour and feed, 552.
- Bristol, Tenn.-Va., to Passaic, N. J. Doors, balusters, moldings, rough and dressed lumber, medicine cabinets, and panel backs, 69.
- Brookhaven, Miss., from Alabama mines. Bituminous coal, 311.
- Brooklyn, N. Y., from Hildebran, N. C., reconsigned at Jersey City, N. J. Lumber, 63.
- Bucoda, Mo., from Arkansas. Lumber and rough stave bolts, 397.
- Buffalo, N. Y., from Chicago, Ill., originating in Illinois. Grain, 124.
- Buffalo-Pittsburgh territory from Helen, Ga. Hardwood lumber, 116.
- Burlington, Iowa, to Edgeley, N. Dak. Class rates; fourth section, 308.
- Burlington, Wis., to Chicago, Ill. Sand and gravel, 90.
- Cairo, Ill., to Port Chalmette, La., for export. Flour, 20.
- California to Globe and other Arizona points. Commodity rates, 573.
- Cambridge, Minn., to Globe, Ariz. Potatoes, 573.
- Canaan, N. H., from and to Flushing, N. Y. Telephone rates, 185.
- Canada to New Mexico, Oklahoma, and Texas. Lumber and lumber products, 387.
- Canada from New York. Fodder yarn, lath yarn, rope, twine, and agricultural implements, 395.
- Canada from Oregon, Washington, Idaho, and Montana. Rental charges on refrigerator cars, 191.
- Cannelton, Ind., to Shelbyville, Ind. Lumber; fourth section, 169.
- Canonsburg, Pa., from Florida. Clay, 275.

- Cape Charles and other points on the eastern shore of Virginia to Ohio, Indiana, Michigan, Illinois, Missouri, Wisconsin, and Iowa. Vegetables and berries, 328.
- Carloss Spur, Ala., to Chicago, Ill., and Indianapolis, Ind., dressed in transit at Northport, Ala. Lumber, 43.
- Carnes, Iowa, to Council Bluffs, Iowa, destined to Arkansas, Kansas, Missouri, and Texas. Corn, 73.
- Carolina territory from New Orleans, La. Grain, grain screenings, and animal and poultry feeds, 654.
- Central freight association territory from Alabama and Tennessee. Pig iron, 738.
- Central freight association territory from Cape Charles and other points on the eastern shore of Virginia. Vegetables and berries, 328.
- Central freight association territory from Florida. Clay, 275.
- Central freight association territory from Gulf ports. Molasses, 435.
- Central freight association territory from Harvard, Ill. Iron and steel articles, 67.
- Central freight association territory from Laona, Wis. Lumber and other forest products, 111.
- Charleston, S. C., from Louisville, Ky., and Cincinnati and Portsmouth, Ohio, via Norfolk, Va. Proportional rates, 382.
- Charlotte, N. C., from South Carolina, refined, and reshipped to Boston, Mass. Crude cottonseed oil, 93.
- Charlotte, N. C., from Virginia cities. Class rates, 24.
- Chattanooga, Tenn., from eastern shore of Virginia. Potatoes, 750.
- Chattanooga, Tenn., from Ironaton and Shelby, Ala. Pig iron, 146.
- Chelsea, Ala., to Avondale, Ala., milled and reshipped to various destinations. Lumber, 82.
- Cherokee, Iowa, to Council Bluffs, Iowa, destined to Missouri, Kansas, Arkansas, and Texas. Corn, 73.
- Chester, W. Va., from Florida. Clay, 275.
- Chicago, Ill., from Akron, Ohio. Sewer pipe, 177.
- Chicago, Ill., from Burlington, Wis. Sand and gravel, 90.
- Chicago, Ill., from Cape Charles and other points on the eastern shore of Virginia. Vegetables and berries, 328.
- Chicago, Ill., from Carloss Spur, Ala., dressed in transit at Northport, Ala. Lumber, 43.
- Chicago, Ill., to Dallas, Tex. Secondhand iron and steel drums, 594.
- Chicago, Ill., to Edgeley, N. Dak. Class rates; fourth section, 308.
- Chicago, Ill., to Globe, Ariz. Canned goods, packing-house products, and furniture, 573.
- Chicago, Ill., from Gulf ports. Molasses, 435.
- Chicago, Ill., from Houston, Tex. Scrap iron, 525.
- Chicago, Ill., from Illinois, reshipped to various destinations. Grain, 124.
- Chicago, Ill., from Illinois and Indiana mines. Bituminous coal, 603.
- Chicago, Ill., to La Moure and Berlin, N. Dak. Commodity rates, 308.
- Chicago, Ill., from Mount Pleasant, Tenn. Phosphate rock, 56.
- Chicago, Ill., to New York, N. Y. Cotton shoddy garment padding, 7.
- Chicago, Ill., to Oakdale, Cal. Coal, 175.
- Chicago, Ill., from Phildia, Iowa. Electric locomotive wheels, 675.
- Chicago, Ill., from Plymouth Junction, Pa. Coal, 88.
- Chicago, Ill., from St. Clare, Ind., reconsigned at Faithorn, Ill. Bituminous coal, 543.
- Chicago, Ill., to Spokane, Wash. Mimeographs and addressing machines, 517.
- Chicago, Ill., from Springfield, Ohio. Green salted hides, 305.
- Chicago, Ill., to Torrington, Wyo. Class rates, 512.
- Chicago, Ill., to Wisconsin, Minnesota, and Iowa. Wool and wool combings, 101.

- Chicago Heights, Ill., to Denver, Colo. Phosphate of lime, 610.
- Chillicothe, Tex., from Ada, Okla. Cement, 94.
- Cincinnati, Ohio, from Arkansas, Louisiana, Missouri, Oklahoma, and Texas. Cottonseed oil, soap stock, tank bottoms, and inedible tallow, 121.
- Cincinnati, Ohio, from Cape Charles and other points on the eastern shore of Virginia. Vegetables and berries, 328.
- Cincinnati, Ohio, from Columbus, Ga. Paper stock, 506.
- Cincinnati, Ohio, to Globe, Ariz. Class rates, 573.
- Cincinnati, Ohio, from Grasselli, Ala. Sulphuric acid, 109.
- Cincinnati, Ohio, from Helen, Ga. Hardwood lumber, 116.
- Cincinnati, Ohio, to Louisiana. Soap, soap powder, cleansing powder, and lard substitute; fourth section, 467.
- Cincinnati, Ohio, to Norfolk, Va., destined to Charleston, S. C. Proportional rates, 382.
- Cincinnati, Ohio, to Richmond, Ky., originating at points in the north and west. Through rates, 451.
- Clarksdale, Miss., from Alabama mines. Bituminous coal, 311.
- Clarksville, Tenn., from Gulf ports. Molasses, 435.
- Cleghorn, Iowa, to Council Bluffs, Iowa, destined to Missouri, Kansas, Arkansas, and Texas. Corn, 73.
- Cleveland, Ohio, from Cape Charles and other points on the eastern shore of Virginia. Vegetables and berries, 328.
- Cleveland, Ohio, from Laona, Wis. Lumber and other forest products, 111.
- Climax, Ala., to Nashville, Tenn. Yellow-pine lumber, 535.
- Columbia, S. C., from eastern shore of Virginia. Potatoes, 750.
- Columbia, S. C., from New Orleans, La. Grain, grain screenings, and animal and poultry feeds, 654.
- Columbus, Ga., to Cincinnati and Lockland, Ohio. Paper stock, 506.
- Columbus, Ohio, from Cape Charles and other points on the eastern shore of Virginia. Vegetables and berries, 328.
- Connecticut from Jersey City, N. J., and New York, N. Y. Manure, 465.
- Connecticut to Milford, Mass. Cider apples, 16.
- Constable Hook, N. J., from Louisiana, milled and reshipped at Whiteville, La. Stave bolts, 165.
- Council Bluffs, Iowa, to Atchison and Leavenworth, Kans., reshipped to Mississippi River and points east of. Grain and grain products, 358.
- Council Bluffs, Iowa, to Auxvasse and other points in Missouri. Corn and oats, 523.
- Council Bluffs, Iowa, from Iowa, destined to Missouri, Kansas, Arkansas, and Texas. Corn, 73.
- Council Bluffs, Iowa, to and from Nebraska. Class rates, 201.
- Cragford, Ala., to Avondale, Ala., milled and reshipped to various destinations. Lumber, 82.
- Cupples Station, St. Louis, Mo. Terminal regulations, 425.
- Dalhart, Tex., from Oregon, Washington, Idaho, Montana, and western Canada. Lumber and lumber products, 387.
- Dallas, Tex., from Alabama mines. Bituminous coal, 311.
- Dallas, Tex., from Chicago, Kansas City, and Atlanta. Secondhand iron and steel drums, 594.
- Dallas, Tex., from St. Louis and Kansas City, Mo. Commodity rates, 619.
- Danville, Ill., from Laona, Wis. Lumber and other forest products, 111.
- Danville, Va., from Lela and Eleanor, Ga. Lumber, 541.
- Danville, Va., from New Orleans, La. Grain, grain screenings, and animal and poultry feeds, 654.

- Dayton, Ohio, to various destinations. Stamped newspaper wrappers and envelopes; classification, 405.
- Dayton, Va., from Milwaukee, Wis., reconsigned to Bridgewater, Va. Flour and feed, 552.
- Delaware from New England. Cotton piece goods, 411.
- Denison, Tex., from St. Louis and Kansas City, Mo. Commodity rates, 619.
- Denton, N. C., to Wilmington, Del. Lumber, 549.
- Denver, Colo., from Chicago Heights, Ill. Phosphate of lime, 610.
- Denver, Colo., to Globe, Ariz. Class rates, 573.
- Denver, Colo., from Keokuk, Iowa. Rolled oats, 531.
- De Ridder, La., from Alabama mines. Bituminous coal, 311.
- Des Moines, Iowa, from Chicago, Ill. Wool and wool combings, 101.
- Des Moines, Iowa, from Virginia. Peanuts, 53.
- Detroit, Mich., to La Moure and Berlin, N. Dak. Commodity rates, 308.
- Detroit, Mich., from Laona, Wis. Lumber and other forest products, 111.
- Dooling, Ga., to Atlantic City, N. J. Lumber, 549.
- Dubuisson, La., to Whiteville, La., milled and reshipped to Constable Hook, N. J. Stave bolts, 165.
- Duluth, Minn., from Chicago, Ill. Wool and wool combings, 101.
- Duluth, Minn., from and to trunk line territory. Through routes and joint rates, 335.
- Durant, Miss., from Alabama mines. Bituminous coal, 311.
- East Liverpool, Ohio, from Florida. Clay, 275.
- East Moline, Ill. Demurrage on castings and lumber, 533.
- East Palestine, Ohio, from Florida. Clay, 275.
- East St. Louis, Ill., to Cairo, Ill., milled into flour and reshipped to Port Chalmette, La., for export. Flour, 20.
- East St. Louis, Ill., from Cape Charles and other points on the eastern shore of Virginia. Vegetables and berries, 328.
- East St. Louis, Ill., from New Albany, Miss. Live stock, 695.
- East St. Louis, Ill., from Sioux City, Iowa. Hogs, 609.
- Eastern seaboard to Richmond, Ky. Through rates, 451.
- Eastern shore of Virginia, to Ohio, Indiana, Michigan, Illinois, Missouri, Wisconsin, and Iowa. Vegetables and berries, 328.
- Eastern shore of Virginia to southeastern territory. Potatoes, 750.
- Eastern territory to Globe, Ariz. Class and commodity rates, 573.
- Eastern territory to Pacific coast terminals. Commodity rates, 35.
- Eastern territory to points intermediate to Pacific coast terminals. Commodity rates, 517.
- Eddystone, Pa., from New England. Cotton piece goods, 411.
- Edgar, Fla., to Ohio and West Virginia, and Canonsburg, Pa. Clay, 275.
- Edgeley, N. Dak., from Chicago, Ill., and Burlington, Iowa. Class rates; fourth section, 308.
- El Paso, Tex., from California. High explosives; fourth section, 573.
- El Paso, Tex., from Oregon, Washington, Idaho, Montana, and western Canada. Lumber and lumber products, 387.
- Eldorado, Ark., from Alabama mines. Bituminous coal, 311.
- Eleanor, Ga., to Danville, Va. Lumber, 541.
- Elgin, Okla., from Huttig, Ark. Lumber, 661.
- Elkin, N. C., to New York, N. Y. Lumber, 63.
- Ellsworth, Minn., from and to Sheldon, Iowa. Soft drinks and empty bottles, 527.
- Embree, S. C., to Trenton, N. J. Lumber, 549.
- Evansville, Ind., from Helen, Ga. Hardwood lumber, 116.
- 40 I. C. C.

- Evansville, Ind., from Tennessee and Kentucky. Crossties and switch ties, 377.
- Fairmont, W. Va., to Lorain, Ohio. Coal, 408.
- Faithorn, Ill., from St. Clare, Ind., reconsigned to Chicago, Ill. Bituminous coal, 543.
- Fall River, Mass., to Rockford and Kentmere, Del., and points in the middle Atlantic states. Cotton piece goods, 411.
- Fargo, N. Dak., to Arnegard, N. Dak. Plate-iron culverts, 537.
- Florida from eastern shore of Virginia. Potatoes, 750.
- Florida to Nashville, Tenn., reshipped to points north of the Ohio and Potomac rivers. Hardwood lumber, 59.
- Florida to Ohio and West Virginia, and Canonsburg, Pa. Clay, 275.
- Flushing, N. Y., to and from Canaan, N. H. Telephone rates, 185.
- Fort Calhoun, Nebr., from Gulf ports. Blackstrap molasses, 435.
- Fort Dodge, Iowa, from Piqua, Ohio. Shovels, 747.
- Fort Sumner, N. Mex., from Hutchinson and other Kansas points. Flour, 160.
- Fort Wayne, Ind., from Cape Charles and other points on the eastern shore of Virginia. Vegetables and berries, 328.
- Fort Wayne, Ind., from Illinois and Indiana mines. Bituminous coal, 603.
- Fort Worth, Tex., from Council Bluffs, Iowa, originating at other points in Iowa. Corn, 73.
- Fort Worth, Tex., from Oregon, Washington, Idaho, Montana, and western Canada. Lumber and lumber products, 387.
- Fort Worth, Tex., from St. Louis and Kansas City, Mo. Commodity rates, 619.
- Fountain, Colo., from Monahans, Tex., originally consigned to Gillette, Wyo. Range cattle, 658.
- Fountain Inn, S. C., to Boston, Mass., refined in transit at Charlotte, N. C. Crude cottonseed oil, 93.
- Franklin, Va., to Marshalltown, Des Moines, and Waterloo, Iowa. Peanuts, 53.
- Fulton, Mo., from Omaha and South Omaha, Nebr., and Council Bluffs, Iowa. Corn and oats, 523.
- Gainesville, Tex., from Oregon, Washington, Idaho, Montana, and western Canada. Lumber and lumber products, 387.
- Galesburg, Ill., from Laona, Wis. Lumber and other forest products, 111.
- Galveston, Tex., from Louisiana. Lumber, 268.
- Galveston, Tex., from Oklahoma, Kansas, Iowa, Missouri, and Nebraska. Grain and products, 280.
- Galveston, Tex., to Tulsa, Okla. Bananas and coconuts, 9.
- Garland, La., to Whiteville, La., milled and reshipped to Constable Hook, N. J. Stave bolts, 165.
- Garland, N. C., to Virginia cities, destined beyond. Lumber, 88.
- Georgia from eastern shore of Virginia. Potatoes, 750.
- Georgia to Nashville, Tenn., reshipped to points north of the Ohio and Potomac rivers. Hardwood lumber, 59.
- Georgia from Tennessee. Coal, 180.
- Gillette, Wyo., from Monahans, Tex., reconsigned in transit to Fountain, Colo. Range cattle, 658.
- Glenn Springs, S. C., to Boston, Mass., refined in transit at Charlotte, N. C. Crude cottonseed oil, 93.
- Globe, Ariz., from California and eastern points. Commodity rates, 573.
- Goes, Ohio, to Virginia, West Virginia, and Kentucky. Black powder, 667.
- Grafton, W. Va., to Wytheville, Va. Contractors' outfit, 539.
- Granby, Conn., to Milford, Mass. Cider apples, 16.
- Grand Rapids, Mich., from Laona, Wis. Lumber and other forest products, 111.

- Grasmere, Ala., to Avondale, Ala., milled and reshipped to various destinations. Lumber, 82.
- Grasselli, Ala., to Cincinnati, Ohio. Sulphuric acid, 109.
- Grayland, Ill., from Baltimore, Md. Contractors' outfits, structural steel, and lumber, 151.
- Greensboro, N. C., from eastern shore of Virginia. Potatoes, 750.
- Greenville, Miss., from Alabama mines. Bituminous coal, 311.
- Grenada, Miss., from Alabama mines. Bituminous coal, 311.
- Gulf points to various destinations. Clean rice, 285.
- Gulf ports to Memphis, Tenn., St. Cloud, Minn., Missouri River cities, Fort Calhoun, Nebr., and points on and north of the Ohio River. Molasses, 435.
- Gulf ports from Oklahoma, Kansas, Missouri, Iowa, and Nebraska, for export. Grain and products, 280.
- Gulfport, Miss., to Memphis, Tenn., St. Cloud, Minn., Missouri River cities, Fort Calhoun, Nebr., and points in Kansas and Oklahoma. Blackstrap molasses, 435.
- Hammond, Ind., from Chicago, Ill., originating in Illinois. Grain, 124.
- Hammond, La., from Alabama mines. Bituminous coal, 311.
- Hardwick, Minn., from and to Sheldon, Iowa. Soft drinks and empty bottles, 527.
- Harpersville, Ala., to Avondale, Ala., milled and reshipped to various destinations. Lumber, 82.
- Harvard, Ill., to C. F. A. territory. Iron and steel articles, 67.
- Havana, Ill., from Rome, Miss. Lumber, 677.
- Helen, Ga., to Cincinnati, Ohio, and other Ohio River crossings, and Buffalo-Pittsburgh territory. Hardwood lumber, 116.
- High Point, N. C., to Spokane, Wash. Desks, 517.
- Hildebran, N. C., to Jersey City, N. J., reconsigned to Brooklyn, N. Y. Lumber, 63.
- Hillsboro, Tex., from Oregon, Washington, Idaho, Montana, and western Canada. Lumber and lumber products, 387.
- Hillside, Ill., from Barre, Vt. Granite monuments and parts, 77.
- Hospers, Iowa, to Council Bluffs, Iowa, destined to Kansas, Arkansas, Missouri, and Texas. Corn, 73.
- Houston, Tex., from Alabama mines. Bituminous coal, 311.
- Houston, Tex., to Chicago, Ill. Scrap iron, 525.
- Houston, Tex., from Oregon, Washington, Idaho, Montana, and western Canada. Lumber and lumber products, 387.
- Hudson Upper, N. Y., from Bolivar, Pa., reconsigned at Stuyvesant Falls, N. Y. Coal, 4.
- Huntingburg, Ind., to Shelbyville, Ind. Lumber, 169.
- Huntington, W. Va., from Roseville, Ohio. Brick, 669.
- Hutchinson, Kans., to Globe, Ariz. Salt, 573.
- Hutchinson, Kans., to New Mexico. Flour, 160.
- Huttig, Ark., to Elgin, Okla. Lumber, 661.
- Huttig, Ark., from St. Louis, Mo., and Memphis, Tenn. Furniture, stoves, wood-working machinery, cement, and structural steel, 661.
- Huttig, Ark., to various points. Divisions on hardwood lumber, 470.
- Idaho to New Mexico, Oklahoma, and Texas. Lumber and lumber products, 387.
- Idaho from and to Portland, Oreg. Sample cases of brooms, 167.
- Idaho to various destinations. Rental charges on refrigerator cars, 191.
- Illinois from Cape Charles and other points on the eastern shore of Virginia. Vegetables and berries, 328.
- Illinois to Chicago, reshipped to various destinations. Grain, 124.
- Illinois from Gulf ports. Molasses, 435.
- Illinois from Illinois and Indiana mines. Bituminous coal, 603.

- Illinois to La Moure and Berlin, N. Dak. Commodity rates, 308.
- Illinois from Laona, Wis. Lumber and other forest products, 111.
- Illinois mines to Illinois, Indiana, Michigan, and Wisconsin. Bituminous coal, 603.
- Indiana from Cape Charles and other points on the eastern shore of Virginia. Vegetables and berries, 328.
- Indiana from Chicago, Ill., originating in Illinois. Grain, 124.
- Indiana from Gulf ports. Molasses, 435.
- Indiana from Harvard, Ill. Iron and steel articles, 67.
- Indiana from Illinois and Indiana mines. Bituminous coal, 603.
- Indiana from Laona, Wis. Lumber and other forest products, 111.
- Indiana Harbor, Ind., from Chicago, Ill., originating in Illinois. Grain, 124.
- Indiana mines to Illinois, Indiana, Michigan, and Wisconsin. Bituminous coal, 603.
- Indianapolis, Ind., from Cape Charles and other points on the eastern shore of Virginia. Vegetables and berries, 328.
- Indianapolis, Ind., from Carlos Spur, Ala., dressed in transit at Northport, Ala. Lumber, 43.
- Indianapolis, Ind., from Laona, Wis. Lumber and other forest products, 111.
- Iowa from Cape Charles and other points on the eastern shore of Virginia. Vegetables and berries, 328.
- Iowa from Chicago, Ill. Wool and wool combings, 101.
- Iowa from Chicago, Ill., originating in Illinois. Grain, 124.
- Iowa to Council Bluffs, Iowa, destined to Missouri, Kansas, Arkansas, and Texas. Corn, 73.
- Iowa from Gulf ports. Molasses, 435.
- Iowa to Gulf ports, for export. Grain and products, 280.
- Iowa from New Orleans and other Gulf points. Clean rice, 285.
- Ironaton, Ala., to Chattanooga and Boyce, Tenn. Pig iron, 146.
- Ivorydale, Ohio, from Arkansas, Louisiana, Missouri, Oklahoma, and Texas. Cottonseed oil, soap stock, tank bottoms, and inedible tallow, 121.
- Ivorydale, Ohio, to Louisiana. Soap, soap powder, cleansing powder, and lard substitute, 367.
- Jackson, Mich., to various destinations. Fiber furniture; classification, 503.
- Jackson, Miss., from Alabama mines. Bituminous coal, 311.
- Jacksonville, Fla., to North Wales, Pa. Lumber, 295.
- Jacksonville, Fla., to Tampa and Lakeland, Fla. Sewer pipe, 568.
- Jasper, Minn., from and to Sheldon, Iowa. Soft drinks and empty bottles, 527.
- Jersey City, N. J., to Connecticut. Manure, 465.
- Jersey City, N. J., from Statesville, N. C. Lumber, 63.
- Joliet, Ill., to La Moure and Berlin, N. Dak. Commodity rates, 308.
- Joplin, Mo., from New Orleans, La. Class and commodity rates; fourth section, 9.
- Kansas to Arkansas. Grain, 49.
- Kansas from Council Bluffs, Iowa, originating at other Iowa points. Corn, 73.
- Kansas from Gulf ports. Blackstrap molasses, 435.
- Kansas to Gulf ports, for export. Grain and products, 280.
- Kansas to New Mexico. Flour, 160.
- Kansas from Oak Hills, Colo. Bituminous coal, 497.
- Kansas from Wisconsin. Cheese, 1.
- Kansas from Witteville, Okla. Coal, 459.
- Kansas City, Kans., to Globe, Ariz. Soap and crackers, 573.
- Kansas City, Kans., to Louisiana. Soap, soap powder, cleansing powder, and lard substitute, 367.
- Kansas City, Mo., from Atchison and Leavenworth, Kans., originating at Council Bluffs, Iowa, and Omaha and South Omaha, Nebr. Grain products, 358.

- Kansas City, Mo., from Council Bluffs, Iowa, originating at other points in Iowa. Corn, 73.
- Kansas City, Mo., to Dallas, Tex. Secondhand iron and steel drums, 594.
- Kansas City, Mo., to Dallas, Fort Worth and other points in northeastern Texas. Commodity rates, 619.
- Kansas City, Mo., from Gulf ports. Molasses, 435.
- Kansas City, Mo., to Louisiana. Soap, soap powder, cleansing powder, and lard substitute, 367.
- Kansas City, Mo., to and from Nebraska. Class rates, 201.
- Kennebec, Iowa, to Council Bluffs, Iowa, destined to Missouri, Kansas, Arkansas, and Texas. Corn, 73.
- Kenneth, Minn., from and to Sheldon, Iowa. Soft drinks and empty bottles, 527.
- Kenosha, Wis., from Alabama and Tennessee. Pig iron, 738.
- Kenosha, Wis., to Globe, Ariz. Farm wagons, 573.
- Kentmere, Del., from New England. Cotton piece goods, 411.
- Kentucky to Evansville, Ind., and Louisville, Ky. Crossties and switch ties, 377.
- Kentucky from Goes, Ohio. Black powder, 667.
- Kentucky from Harvard, Ill. Iron and steel articles, 67.
- Kentucky from Laona, Wis. Lumber and other forest products, 111.
- Keokuk, Iowa, to Denver and Pueblo, Colo. Rolled oats, 531.
- Knoxville, Tenn., from eastern shore of Virginia. Potatoes, 750.
- La Colle colliery No. 1, Bolivar, Pa., to Hudson Upper, N. Y., reconsigned at Stuyvesant Falls, N. Y. Coal, 4.
- La Moure, N. Dak., from Detroit, Mich., Nashville, Tenn., Richmond, Ind., and Chicago, West Pullman, and Joliet, Ill. Commodity rates, 308.
- Lafayette, La., from Alabama mines. Bituminous coal, 311.
- Lake Champlain. Operation of boat line, 297.
- Lake George. Operation of boat line, 297.
- Lake Memphremagog. Operation of boat line, 565.
- Lake Winnepesaukee. Operation of boat line, 565.
- Lakeland, Fla., from Jacksonville, Fla. Sewer pipe, 568.
- Lansing, Mich., from Laona, Wis. Lumber and other forest products, 111.
- Laona, Wis., to C. F. A. territory and points in New York, Pennsylvania, West Virginia, and Kentucky. Lumber and other forest products, 111.
- Leachville, Ark., to Bucoda and Paulding, Mo. Lumber and rough stave bolts, 397.
- Leavenworth, Kans. Transit arrangements on grain and grain products from Omaha and South Omaha, Nebr., and Council Bluffs, Iowa, reshipped to Mississippi River and points east of, 358.
- Leesburg, Va., from Milwaukee, Wis., reconsigned at Vienna, Va. Wheat and flour, 615.
- Leesville, La., to Galveston and other Texas points. Lumber, 268.
- Lela, Ga., to Danville, Va. Lumber, 541.
- Lincoln, Nebr., from Milwaukee, Wis., and Middletown, Ohio. Motorcycles, 171.
- Lincoln, Nebr., to and from Missouri River cities. Class rates, 201.
- Lismore, Minn., from and to Sheldon, Iowa. Soft drinks and empty bottles, 527.
- Litroe, La., from St. Louis and Memphis. Furniture, cement, stoves, and structural steel; fourth section, 661.
- Little Rock, Ark., from Council Bluffs, Iowa, originating at other points in Iowa. Corn, 73.
- Little Rock, Ark., from Kansas and Missouri. Grain, 49.
- Lockland, Ohio, from Columbus, Ga. Paper stock, 506.
- Lorain, Ohio. Demurrage on coal, 408.
- Los Angeles, Cal., to Globe and other Arizona points. Commodity rates, 573.
- 40 I. C. C.

- Los Angeles, Cal., to Salt Lake City, Utah. Passenger fares, 65.
- Louisiana. Milling-in-transit on logs, 597.
- Louisiana from Alabama mines. Bituminous coal, 311.
- Louisiana to Cincinnati, Ivorydale, and St. Bernard, Ohio. Cottonseed oil, soap stock, tank bottoms, and inedible tallow, 121.
- Louisiana from eastern shore of Virginia. Potatoes, 750.
- Louisiana to Galveston and other Texas points. Lumber, 268.
- Louisiana from Ivorydale and St. Bernard, Ohio, Kansas City, Mo., and Kansas City, Kans. Soap, soap powder, cleansing powder, and lard substitute, 367.
- Louisiana from Macon, Ga. Lard substitute, 373.
- Louisiana to Nashville, Tenn., reshipped to points north of the Ohio and Potomac rivers. Hardwood lumber, 59.
- Louisiana to Ohio, Mississippi, and Missouri rivers, Tennessee, Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, South Dakota, Iowa, Missouri, Kansas, and Oklahoma. Molasses, 435.
- Louisiana to various destinations. Clean rice, 285.
- Louisiana to Whiteville, La., milled and reshipped to Constable Hook, N. J. Stave bolts, 165.
- Louisiana ports from Oklahoma, Kansas, Missouri, Iowa, and Nebraska, for export. Grain and products, 280.
- Louisville, Ky. Switching, 679.
- Louisville, Ky., from Cape Charles and other points on the eastern shore of Virginia. Vegetables and berries, 328.
- Louisville, Ky., from Gulf ports. Molasses, 435.
- Louisville, Ky., from Helen, Ga., Hardwood lumber, 116.
- Louisville, Ky., to Norfolk, Va., destined to Charleston, S. C. Proportional rates, 382.
- Louisville, Ky., to Richmond, Ky., originating at points in the north and west. Through rates, 451.
- Louisville, Ky., from Tennessee and Kentucky. Crossties and switch ties, 377.
- Louviers, Colo., to Port Arthur, Tex. Sulphuric acid, 529.
- Lowndesville, S. C., to Boston, Mass., refined in transit at Charlotte, N. C. Crude cottonseed oil, 93.
- Lumberton, N. C., from New Orleans, La. Grain, grain screenings, and animal and poultry feeds, 654.
- Lynchburg, Va., from Lela and Eleanor, Ga. Lumber; fourth section, 541.
- Lynchburg, Va., to North Carolina. Class rates, 24.
- McAlester, Okla., from Oregon, Washington, Idaho, Montana, and western Canada. Lumber and lumber products, 387.
- McComb, Miss., from Alabama mines. Bituminous coal, 311.
- McCormick, S. C., to Boston, Mass., refined in transit at Charlotte, N. C. Crude cottonseed oil, 93.
- McCredie, Mo., from Omaha and South Omaha, Nebr., and Council Bluffs, Iowa. Corn and oats, 523.
- Macon, Ga., to Louisiana. Lard substitute, 373.
- Maine coast. Operation of boat lines, 272.
- Marshalltown, Iowa, from Virginia. Peanuts, 53.
- Marshfield, Wis., to Pensacola, Fla., re-iced at Montgomery, Ala. Cheese, 173.
- Memphis, Tenn., from Alabama mines. Bituminous coal, 311.
- Memphis, Tenn., from Benton, Ark. Yellow-pine lumber, 515.
- Memphis, Tenn., to Huttig, Ark. Structural steel, 661.
- Memphis, Tenn., from New Orleans and other Louisiana points, Mobile, Ala., Pensacola, Fla., and Gulfport, Miss. Molasses, 435.
- Memphis, Tenn., to Ohio and Mississippi river crossings. Clean rice, 285.

- Michigan from Cape Charles and other points on the eastern shore of Virginia. Vegetables and berries, 328.
- Michigan from Gulf ports. Molasses, 435.
- Michigan from Harvard, Ill. Iron and steel articles, 67.
- Michigan from Illinois and Indiana mines. Bituminous coal, 603.
- Middle Atlantic states from New England. Cotton piece goods, 411.
- Middletown, Ohio, to Lincoln, Nebr. Motorcycles, 171.
- Milford, Mass., from Southwick, Mass., and points in Connecticut. Cider apples, 16.
- Millville, N. J., from New England. Cotton piece goods, 411.
- Milwaukee, Wis., to Dayton, Va., reconsigned to Bridgewater, Va. Flour and feed, 552.
- Milwaukee, Wis., from Illinois and Indiana mines. Bituminous coal, 603.
- Milwaukee, Wis., to Lincoln, Nebr. Motorcycles, 171.
- Milwaukee, Wis., from Springfield, Ohio. Green salted hides, 305.
- Milwaukee, Wis., to Vienna, Va., reconsigned to Leesburg, Va. Flour and wheat, 615.
- Minden, La., from Alabama mines. Bituminous coal, 311.
- Minneapolis, Minn., from Chicago, Ill. Wool and wool combings, 101.
- Minneapolis, Minn., to Providence, R. I. Butter, 45.
- Minneapolis, Minn., from Suffolk, Norfolk, and Petersburg, Va. Peanuts; fourth section, 53.
- Minnesota from Chicago, Ill. Wool and wool combings, 101.
- Minnesota from Gulf ports. Molasses, 435.
- Minnesota from and to Sheldon, Iowa. Soft drinks and empty bottles, 527.
- Minnesota to Sioux City, Iowa. Live stock, 418.
- Mississippi from Alabama mines. Bituminous coal, 311.
- Mississippi from Mount Pleasant, Tenn. Fertilizer, 698.
- Mississippi to Nashville, Tenn., reshipped to points north of Ohio and Potomac rivers. Hardwood lumber, 59.
- Mississippi from New Orleans, La. Molasses, 435.
- Mississippi River from Gulf ports. Molasses, 435.
- Mississippi River to Marshalltown, Des Moines, and Waterloo, Iowa, originating in Virginia. Peanuts, 53.
- Mississippi River crossings from Gulf ports. Molasses, 435.
- Mississippi River crossings from Memphis, Tenn. Clean rice, 285.
- Mississippi Valley territory from Atchison and Leavenworth, Kans. Grain and grain products, 358.
- Missouri to Arkansas. Grain, 49.
- Missouri from Cape Charles and other points on the eastern shore of Virginia. Vegetables and berries, 328.
- Missouri to Cincinnati, Ivorydale, and St. Bernard, Ohio. Cottonseed oil, soap stock, tank bottoms, and inedible tallow, 121.
- Missouri from Council Bluffs, Iowa, originating at other points in Iowa. Corn, 73.
- Missouri from Gulf ports. Molasses, 435.
- Missouri to Gulf ports, for export. Grain and products, 280.
- Missouri from Oak Hills, Colo. Bituminous coal, 497.
- Missouri from Omaha and South Omaha, Nebr., and Council Bluffs, Iowa. Corn and oats, 523.
- Missouri from Wisconsin. Cheese, 1.
- Missouri from Witteville, Okla. Coal, 459.
- Missouri River from Gulf ports. Molasses, 435.
- Missouri River cities from Gulf ports. Blackstrap molasses, 435.
- Missouri River cities from New Orleans and other Gulf points. Clean rice, 285.

- Missouri River cities to Norfolk and Newport News, Va., for export. Grain products, 195.
- Missouri River cities to and from Omaha and other Nebraska points. Class rates, 201.
- Mobile, Ala., to Memphis, Tenn., St. Cloud, Minn., Missouri River cities, Fort Calhoun, Nebr., and points in Kansas and Oklahoma. Blackstrap molasses, 435.
- Mobile, Ala., from Oklahoma, Kansas, Missouri, Iowa, and Nebraska, for export. Grain and products, 280.
- Mocksville, N. C., to Woodstock, Ontario. Oak wagon hawns, 157.
- Moline, Ill., to Omaha, Nebr. Creosote oil, 507.
- Monahans, Tex., to Gillette, Wyo., reconsigned in transit to Fountain, Colo. Range cattle, 658.
- Monroe, La., from Alabama mines. Bituminous coal, 311.
- Montana to New Mexico, Oklahoma, and Texas. Lumber and lumber products, 387.
- Montana from and to Portland, Oreg. Sample cases of brooms, 167.
- Montana to various destinations. Rental charges on refrigerator cars, 191.
- Montgomery, Ala. Re-icing charges on cheese shipped from Marshfield, Wis., to Pensacola, Fla., 173.
- Monticello, Miss., from Alabama mines. Bituminous coal, 311.
- Morgan City, La., to Port Arthur, Tex. Gum lumber, 402.
- Mount Pleasant, Tenn., to Chicago, Ill. Phosphate rock, 56.
- Mount Pleasant, Tenn., to Purvis, Richburg, and Petal, Miss. Fertilizer, 698.
- Murfreesboro, Tenn., from Whitwell and Orme, Tenn. Coal, 745.
- Nashville, Tenn. Free delivery of live stock, 134.
- Nashville, Tenn. Switching, 474.
- Nashville, Tenn., from Climax, Ala. Yellow-pine lumber, 535.
- Nashville, Tenn., from eastern shore of Virginia. Potatoes, 750.
- Nashville, Tenn., from Gulf ports. Molasses, 435.
- Nashville, Tenn., to La Moure and Berlin, N. Dak. Commodity rates, 308.
- Nashville, Tenn., from southern points, reshipped to points north of the Ohio and Potomac rivers. Hardwood lumber, 59.
- Natchez, Miss., from Alabama mines. Bituminous coal, 311.
- Nebraska from and to Council Bluffs and Sioux City, Iowa, Kansas City and St. Joseph, Mo., and Atchison, Kans. Class rates, 201.
- Nebraska to Gulf ports, for export. Grain and products, 280.
- Nebraska from Oak Hills, Colo. Bituminous coal, 497.
- Nebraska from Wisconsin. Cheese, 1.
- Neosho, Mo., from New Orleans, La. Class and commodity rates; fourth section, 9.
- New Albany, Miss., to East St. Louis, Ill. Live stock, 695.
- New Bedford, Mass., to Rockford and Kentmere, Del., and points in the middle Atlantic states. Cotton piece goods, 411.
- New Bloomfield, Mo., from Omaha and South Omaha, Nebr., and Council Bluffs, Iowa. Corn and oats, 523.
- New England. Rates and regulations pertaining to transportation of milk, cream, and pot cheese, 699.
- New England from Louisiana. Clean rice, 285.
- New England from New York. Fodder yarn, lath yarn, rope, twine, and agricultural implements, 395.
- New England to Rockford and Kentmere, Del., and points in the middle Atlantic states. Cotton piece goods, 411.
- New Hartford, Conn., to Milford, Mass. Older apples, 16.
- New Haven, Conn., from North Carolina. Lumber, 63.
- New London, Conn., from and to New York, N. Y. Operation of boat lines, 589.
- New Mexico from Hutchinson and other Kansas points. Flour, 160.

- New Mexico from Oregon, Washington, Idaho, Montana, and western Canada. Lumber and lumber products, 387.
- New Orleans, La., from Alabama mines. Bituminous coal, 311.
- New Orleans, La., to Carolina territory. Grain, grain screenings, and animal and poultry feeds, 654.
- New Orleans, La., from eastern shore of Virginia. Potatoes, 750.
- New Orleans, La., to Globe, Ariz. Class rates, 573.
- New Orleans, La., from Ivorydale and St. Bernard, Ohio, Kansas City, Mo., and Kansas City, Kans. Soap, soap powder, cleansing powder, and lard substitute, 367.
- New Orleans, La., to Joplin and Neosho, Mo. Class and commodity rates; fourth section, 9.
- New Orleans, La., to Ohio, Mississippi, and Missouri rivers, Tennessee, Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, South Dakota, Iowa, Missouri, Kansas, and Oklahoma. Molasses, 435.
- New Orleans, La., from Oklahoma, Kansas, Iowa, Missouri, and Nebraska, for export. Grain and products, 280.
- New Orleans, La., to St. Louis, Mo., Missouri River cities, and other points. Clean rice, 285.
- New Orleans, La., to Tulsa, Okla. Class and commodity rates, 9.
- New York from Harvard, Ill. Iron and steel articles, 67.
- New York from Jersey City, N. J., and New York, N. Y. Manure, 465.
- New York from Laona, Wis. Lumber and other forest products, 111.
- New York from Louisiana. Clean rice, 285.
- New York to New England, and Quebec, Canada. Fodder yarn, lath yarn, rope, twine, and agricultural implements, 395.
- New York harbor. Storage on domestic and export freight, 265.
- New York harbor points to Connecticut. Manure, 465.
- New York, N. Y., from Chicago, Ill. Cotton shoddy garment padding, 7.
- New York, N. Y., to Connecticut. Manure, 465.
- New York, N. Y., to Globe, Ariz. Class rates, 573.
- New York, N. Y., to and from New London, Conn., and Providence, R. I. Operation of boat lines, 589.
- New York, N. Y., to North Adams, Mass. Dyes, 546.
- New York, N. Y., from North Carolina. Lumber, 63.
- New York, N. Y., to Richmond, Ky. Through rates, 451.
- New York, N. Y., to Seattle, Wash. Dried garlic and lemons, 17.
- New York, N. Y., to various destinations. Chilled and frozen meats; car fitting, 555.
- Newark, N. J., from North Carolina. Lumber, 63.
- Newbern, N. C., from New Orleans, La. Grain, grain screenings, and animal and poultry feeds, 654.
- Newbridge, Del., from Smiths Mills, Me. Box shooks, 71.
- Newell, W. Va., from Florida. Clay, 275.
- Newport News, Va., from Missouri River cities, for export. Grain products, 195.
- Norfolk, Va., from Louisville, Ky., and Cincinnati and Portsmouth, Ohio, destined to Charleston, S. C. Proportional rates, 382.
- Norfolk, Va., from Missouri River cities, for export. Grain products, 195.
- Norfolk, Va., to North Carolina. Class rates, 24.
- Norfolk, Va., to Ohio, Indiana, Michigan, Illinois, Missouri, Wisconsin, and Iowa. Vegetables and berries; fourth section, 328.
- Norfolk, Va., to St. Paul and Minneapolis, Minn. Peanuts; fourth section, 53.
- North Adams, Mass., from New York, N. Y. Dyes, 546.
- North Carolina from eastern shore of Virginia. Potatoes, 750.

- North Carolina to New York, Brooklyn, Jersey City, Newark, and New Haven. Lumber, 63.
- North Carolina from Virginia cities. Class rates, 24.
- North Dakota from Wisconsin. Cheese, 1.
- North Pacific coast to New Mexico, Oklahoma, and Texas. Lumber and lumber products, 387.
- North Wales, Pa., from Jacksonville, Fla. Lumber, 295.
- Northampton county, Va., to Ohio, Indiana, Michigan, Illinois, Missouri, Wisconsin, and Iowa. Vegetables and berries, 328.
- Northampton county, Va., to southeastern territory. Potatoes, 750.
- Northport, Ala., from Carloss Spur, Ala., dressed, and reshipped to Chicago, Ill., and Indianapolis, Ind. Lumber, 43.
- Oak Hills, Colo., to Kansas, Nebraska, and Missouri. Bituminous coal, 497.
- Oakdale, Cal., from Chicago, Ill. Coal, 175.
- Odell, Tex., from Ada, Okla. Cement, 94.
- Odem, Tex., from other Texas points destined to various interstate points. Fruits and vegetables, 673.
- Official classification territory. Classification of chain, 499.
- Official classification territory from Nashville, Tenn. Hardwood lumber, 59.
- Ohio from Cape Charles and other points on the eastern shore of Virginia. Vegetables and berries, 328.
- Ohio from Florida. Clay, 275.
- Ohio from Gulf ports. Molasses, 435.
- Ohio from Harvard, Ill. Iron and steel articles, 67.
- Ohio from Laona, Wis. Lumber and other forest products, 111.
- Ohio River from Gulf ports. Molasses, 435.
- Ohio River crossings from Gulf ports. Molasses, 435.
- Ohio River crossings from Helen, Ga. Hardwood lumber, 116.
- Ohio River crossings from Memphis, Tenn. Clean rice, 285.
- Ohio River crossings to Norfolk, Va., destined to Charleston, S. C. Proportional rates, 382.
- Okahumpka, Fla., to Ohio and West Virginia, and Canonsburg, Pa. Clay, 275.
- Oklahoma to Cincinnati, Ivorydale, and St. Bernard, Ohio. Cottonseed oil, soap stock, tank bottoms, and inedible tallow, 121.
- Oklahoma from Gulf ports. Blackstrap molasses, 435.
- Oklahoma to Gulf ports, for export. Grain and products, 280.
- Oklahoma from Oregon, Washington, Idaho, Montana, and western Canada. Lumber and lumber products, 387.
- Oklahoma City, Okla., from Gulf ports. Molasses, 435.
- Oklahoma City, Okla., from Oregon, Washington, Idaho, Montana, and western Canada. Lumber and lumber products, 387.
- Omaha, Nebr., to Atchison and Leavenworth, Kans., reshipped to Mississippi River and points east of. Grain and grain products, 358.
- Omaha, Nebr., to Auxvasse and other Missouri points. Corn and oats, 523.
- Omaha, Nebr., from and to Council Bluffs and Sioux City, Iowa, Kansas City and St. Joseph, Mo., and Atchison, Kans. Class rates, 201.
- Omaha, Nebr., from Moline, Ill. Creosote oil, 507.
- Omaha, Nebr., from and to Torrington, Wyo. Oil and live stock, 512.
- Ontario, Canada, from Harvard, Ill. Iron and steel articles, 67.
- Oregon to New Mexico, Oklahoma, and Texas. Lumber and lumber products, 387.
- Oregon to various destinations. Rental charges on refrigerator cars, 191.
- Orme, Tenn., to Murfreesboro, Tenn. Coal, 745.

- Oyens, Iowa, to Council Bluffs, Iowa, destined to Missouri, Kansas, Arkansas, and Texas. Corn, 73.
- Pacific coast terminals from eastern territory. Commodity rates, 35.
- Pacific coast terminals from Sand Springs, Okla. Glass fruit jars and jelly glasses, 291.
- Paducah, Ky. Switching charges on logs, bolts, and billets, 612.
- Paris, Tex., from St. Louis and Kansas City, Mo. Commodity rates, 619.
- Parkersburg, W. Va., from Florida. Clay, 275.
- Passaic, N. J., from Bristol, Tenn.-Va. Doors, balusters, moldings, rough and dressed lumber, medicine cabinets, and panel backs, 69.
- Paulding, Mo., from Arkansas. Lumber and rough stave bolts, 397.
- Pawtucket, R. I., from Augusta, Ga. Cotton piece goods and cotton factory sweepings, 501.
- Pennsylvania from Harvard, Ill. Iron and steel articles, 67.
- Pennsylvania from Laona, Wis. Lumber and other forest products, 111.
- Pennsylvania from Louisiana. Clean rice, 285.
- Pensacola, Fla., from Marshfield, Wis., re-iced at Montgomery, Ala. Cheese, 173.
- Pensacola, Fla., to Memphis, Tenn., St. Cloud, Minn., Missouri River cities, Fort Calhoun, Nebr., and points in Kansas and Oklahoma. Blackstrap molasses, 435.
- Peoria, Ill., from Illinois and Indiana mines. Bituminous coal, 603.
- Petal, Miss., from Mount Pleasant, Tenn. Fertilizer, 698.
- Petersburg, Va., to North Carolina. Class rates, 24.
- Petersburg, Va., to St. Paul and Minneapolis, Minn. Peanuts; fourth section, 53.
- Philadelphia, Pa., from New England. Cotton piece goods, 411.
- Phildia, Iowa, to Chicago, Ill. Electric locomotive wheels, 675.
- Pine Bluff, Ark., from Alabama mines. Bituminous coal, 311.
- Piqua, Ohio, to Fort Dodge, Iowa. Shovels, 747.
- Pittsburgh, Pa. Demurrage and track-storage charges on burned enamel ware, 84.
- Pittsburgh, Pa., to Bremerton, Wash., and San Francisco, Cal. Iron valves, 105.
- Pittsburgh, Pa., to Globe, Ariz. Bar iron and steel, 573.
- Plymouth Junction, Pa., to Sharon, Ill. Coal, 88.
- Port Arthur, Tex., from Louviers, Colo. Sulphuric acid, 529.
- Port Arthur, Tex., from Morgan City, La. Gum lumber, 402.
- Port Chalmette, La., from Cairo, Ill., originating at East St. Louis, Ill. Flour, 20.
- Port Maitland, Ont., from and to Ashtabula, Ohio. Car-ferry service, 143.
- Port Tampa, Fla., from Jacksonville, Fla. Sewer pipe; fourth section, 568.
- Portland, Oreg., from Sand Springs, Okla. Glass fruit jars and jelly glasses, 291.
- Portland, Oreg., from and to Washington, Idaho, and Montana. Sample cases of brooms, 167.
- Portsmouth, Ohio, to Norfolk, Va., destined to Charleston, S. C. Proportional rates, 382.
- Poughkeepsie, N. Y., to Spokane, Wash. Candy cough drops, 517.
- Providence, R. I., from Minneapolis, Minn. Butter, 45.
- Providence, R. I., from and to New York, N. Y. Operation of boat lines, 589.
- Pueblo, Colo., from Keokuk, Iowa. Rolled oats, 531.
- Purvis, Miss., from Mount Pleasant, Tenn. Fertilizer, 698.
- Quebec Canada, from New York. Fodder yarn, lath yarn, rope, twine, and agricultural implements, 395.
- Raleigh, N. C., from New Orleans, La. Grain, grain screenings, and animal and poultry feeds, 654.
- Reading, Minn., from and to Sheldon, Iowa. Soft drinks and empty bottles, 527.
- Remsen Iowa, to Council Bluffs, Iowa, destined to Missouri, Kansas, Arkansas, and Texas. Corn, 73.
- Richburg, Miss., from Mount Pleasant, Tenn. Fertilizer, 698.

- Richmond, Ind., to La Moure and Berlin, N. Dak. Commodity rates, 308.
- Richmond, Ky., from Cincinnati, Ohio, Louisville, Ky., New York, N. Y., and other eastern seaboard points. Through interstate rates, 451.
- Richmond, Va., to North Carolina. Class rates, 24.
- Roanoke, Va., to North Carolina. Class rates, 24.
- Roanoke, Va., from Wilmington, N. C. Lumber, 80.
- Roby, Ind., from Chicago, Ill., originating in Illinois. Grain, 124.
- Rock Hill, Ind., to Shelbyville, Ind. Lumber; fourth section, 169.
- Rockford, Del., from New England. Cotton piece goods, 411.
- Rockport, Ind., to Shelbyville, Ind. Lumber; fourth section, 169.
- Rolling Fork, Miss., from Alabama mines. Bituminous coal, 311.
- Rome, Miss., to Havana, Ill. Lumber, 677.
- Roseboro, N. C., to Virginia cities, destined beyond. Lumber, 86.
- Roseville, Ohio, to Huntington, W. Va. Brick, 669.
- Roswell, N. Mex., from Hutchinson and other Kansas points. Flour, 160.
- Round Lake, Minn., from and to Sheldon, Iowa. Soft drinks and empty bottles, 527.
- Round Timber, Tex., from Ada, Okla. Cement, 94.
- Roxie, Miss., from Alabama mines. Bituminous coal, 311.
- St. Bernard, Ohio, from Arkansas, Louisiana, Missouri, Oklahoma, and Texas. Cottonseed oil, soap stock, tank bottoms, and inedible tallow, 121.
- St. Bernard, Ohio, to Louisiana. Soap, soap powder, cleansing powder, and lard substitute, 367.
- St. Clare, Ind., to Chicago, Ill., reconsigned at Faithorn, Ill. Bituminous coal, 543.
- St. Cloud, Minn., from Gulf ports. Blackstrap molasses, 435.
- St. Joseph, Mo., from Council Bluffs, Iowa, originating at other points in Iowa. Corn, 73.
- St. Joseph, Mo., to and from Nebraska. Class rates, 201.
- St. Louis, Mo. (Cupples Station). Terminal regulations, 425.
- St. Louis, Mo., to Dallas, Fort Worth, and other points in northeastern Texas. Commodity rates, 619.
- St. Louis, Mo., to Globe, Ariz. Agricultural implements, 573.
- St. Louis, Mo., from Gulf ports. Molasses, 435.
- St. Louis, Mo., to Huttig, Ark. Furniture, stoves, woodworking machinery, and cement, 661.
- St. Louis, Mo., from New Orleans, La. Clean rice, 285.
- St. Paul, Minn., from Suffolk, Norfolk, and Petersburg, Va. Peanuts; fourth section, 53.
- Salt Lake City, Utah, from Los Angeles, Cal. Passenger fares, 65.
- Salt Lake City, Utah, from Wedron, Ill. Sand, 483.
- San Angelo, Tex., from Ada, Okla. Cement, 94.
- San Antonio, Tex., from Oregon, Washington, Idaho, Montana, and western Canada. Lumber and lumber products, 387.
- San Benito, Tex., to various destinations. Fruits and vegetables, 673.
- San Diego, Cal., from Sand Springs, Okla. Glass fruit jars and jelly glasses, 291.
- San Francisco, Cal., to Globe and other Arizona points. Commodity rates, 573.
- San Francisco, Cal., from Pittsburgh, Pa. Iron valves, 105.
- San Francisco, Cal., from Sand Springs, Okla. Glass fruit jars and jelly glasses, 291.
- Sand Springs, Okla., to Pacific coast terminals. Glass fruit jars and jelly glasses, 291.
- Sandersdale, Mass., from Augusta, Ga. Cotton piece goods and cotton factory sweepings, 501.
- Santa Fe, N. Mex., from Hutchinson and other Kansas points. Flour, 160.
- Seattle, Wash., from New York, N. Y. Dried garlic and lemons, 17.
- Seattle, Wash., from Sand Springs, Okla. Glass fruit jars and jelly glasses, 291.

Sebring, Ohio, from Florida. Clay, 275.
 Shady Side, Ohio, to Pittsburgh, Pa. Burned enamel ware, 84.
 Sharon, Ill., from Plymouth Junction, Pa. Coal, 88.
 Sheboygan, Wis., from Beaudette, Minn. Lumber, 283.
 Shelby, Ala., to Chattanooga and Boyce, Tenn. Pig iron, 146.
 Shelby, N. C., from eastern shore of Virginia. Potatoes, 750.
 Shelbyville, Ind., from Huntingburg, Ind. Lumber, 169.
 Sheldon, Iowa, to and from Minnesota. Soft drinks and empty bottles, 527.
 Shreveport, La., from Alabama mines. Bituminous coal, 311.
 Simsbury, Conn., to Milford, Mass. Cider apples, 16.
 Sioux City, Iowa, to East St. Louis, Ill. Hogs, 609.
 Sioux City, Iowa, from Minnesota and South Dakota. Live stock, 418.
 Sioux City, Iowa, to and from Nebraska. Class rates, 201.
 Smiths Mills, Me., to Newbridge, Del. Box shooks, 71.
 South Bend, Ind., from Illinois and Indiana mines. Bituminous coal, 603.
 South Carolina to Boston, Mass., refined in transit at Charlotte, N. C. Crude cotton-seed oil, 93.
 South Carolina from eastern shore of Virginia. Potatoes, 750.
 South Dakota from Gulf ports. Molasses, 435.
 South Dakota to Sioux City, Iowa. Live stock, 418.
 South Dakota from Wisconsin. Cheese, 1.
 South Omaha, Nebr., to Atchison and Leavenworth, Kans., reshipped to Mississippi River and points east of. Grain and grain products, 358.
 South Omaha, Nebr., to Auxvasse and other Missouri points. Corn and oats, 523.
 Southeastern territory from eastern shore of Virginia. Potatoes, 750.
 Southeastern territory from Gulf ports. Molasses, 435.
 Southwestern territory. Milling-in-transit on logs, 597.
 Southwick, Mass., to Milford, Mass. Cider apples, 16.
 Spartanburg, S. C., from eastern shore of Virginia. Potatoes, 750.
 Spokane, Wash., from Chicago, Ill., Poughkeepsie, N. Y., and High Point N. C. Various commodities, 517.
 Springfield, Ohio, to Chicago, Ill., and Milwaukee, Wis. Green salted hides 305.
 Statesville, N. C., to Jersey City, N. J. Lumber, 63.
 Statesville, N. C., from Virginia cities. Class rates, 24.
 Stewart, La., to Whiteville, La., milled and reshipped to Constable Hook, N. J. Stave bolts, 165.
 Stuyvesant Falls, N. Y., from Bolivar, Pa., reconsigned to Hudson Upper, N. Y. Coal, 4.
 Suffolk, Va., to North Carolina. Class rates, 24.
 Suffolk, Va., to St. Paul and Minneapolis, Minn. Peanuts; fourth section, 53.
 Sugarland, Tex., to northern points. Molasses, 435.
 Superior, Wis., from and to trunk line territory. Through routes and joint rates, 335.
 Syracuse, N. Y., to New England and Quebec, Canada. Fodder yarn, lath yarn, and agricultural implements, 395.
 Tampa, Fla., from Jacksonville, Fla. Sewer pipe, 568.
 Taylorsville, N. C., to New York, N. Y. Lumber, 63.
 Tell City, Ind., to Shelbyville, Ind. Lumber; fourth section, 169.
 Tennessee from Alabama mines. Bituminous coal, 311.
 Tennessee to C. F. A. territory. Pig iron, 738.
 Tennessee from eastern shore of Virginia. Potatoes, 750.
 Tennessee to Evansville, Ind., and Louisville, Ky. Crossties and switch ties, 377.
 Tennessee from Gulf ports. Molasses, 435.
 Tennessee to Nashville, Tenn., reshipped to points north of the Ohio and Potomac rivers. Hardwood lumber, 59.

- Tennessee to Paducah, Ky. Bolts, logs, and billets, 612.
- Tennessee mines to Georgia. Coal, 180.
- Texas. Milling-in-transit on logs, 597.
- Texas from Ada, Okla. Cement, 94.
- Texas from Alabama mines. Bituminous coal, 311.
- Texas to Cincinnati, Ivorydale, and St. Bernard, Ohio. Cottonseed oil, soap stock, tank bottoms, and inedible tallow, 121.
- Texas from Council Bluffs, Iowa, originating at other Iowa points. Corn, 73.
- Texas from Louisiana. Lumber, 268.
- Texas to Ohio, Mississippi, and Missouri rivers, Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, South Dakota, Iowa, Missouri, Kansas, and Oklahoma. Molasses, 435.
- Texas from Oregon, Washington, Idaho, Montana, and western Canada. Lumber and lumber products, 387.
- Texas from St. Louis and Kansas City, Mo. Commodity rates, 619.
- Texas to various destinations. Clean rice, 285.
- Texas to various destinations. Fruits and vegetables, 673.
- Texas from Witteville, Okla. Coal, 459.
- Texas City, Tex., from Oklahoma, Missouri, Kansas, Iowa, and Nebraska, for export. Grain and products, 280.
- Ticonic, Iowa, to Council Bluffs, Iowa, destined to Missouri, Kansas, Arkansas, and Texas. Corn, 73.
- Tiffin, Ohio, from Florida. Clay, 275.
- Timmons ville, S. C., from New Orleans, La. Grain, grain screenings, and animal and poultry feeds, 654.
- Toledo, Ohio, from Cape Charles and other points on the eastern shore of Virginia. Vegetables and berries, 328.
- Toledo, Ohio, from Laona, Wis. Lumber and other forest products, 111.
- Torrington, Wyo., from Chicago, Ill. Class rates, 512.
- Torrington, Wyo., to and from Omaha, Nebr. Live stock and oil, 512.
- Tracy City, Tenn., to Georgia. Bituminous coal, 180.
- Trenton, N. J., from Embree, S. C. Lumber, 549.
- Trosky, Minn., from and to Sheldon, Iowa. Soft drinks and empty bottles, 527.
- Troy, Ind., to Shelbyville, Ind. Lumber; fourth section, 169.
- Trunk line territory to and from Duluth, Minn., and Superior, Wis. Through routes and joint rates, 335.
- Tulsa, Okla., from New Orleans, La., and Galveston, Tex. Class and commodity rates, 9.
- Utica, N. Y., to New England and Quebec, Canada. Fodder yarn, lath yarn, and agricultural implements, 395.
- Vicksburg, Miss., from Alabama mines. Bituminous coal, 311.
- Vienna, Va., from Milwaukee, Wis., reconsigned to Leesburg, Va. Wheat and flour, 615.
- Vincennes, Ind., from Laona, Wis. Lumber and other forest products, 111.
- Virginia from Goes, Ohio. Black powder, 667.
- Virginia to Marshalltown, Des Moines, and Waterloo, Iowa. Peanuts, 53.
- Virginia to Ohio, Indiana, Michigan, Illinois, Missouri, Wisconsin, and Iowa. Vegetables and berries, 328.
- Virginia to southeastern territory. Potatoes, 750.
- Virginia cities to North Carolina. Class rates, 24.
- Virginia cities to Richmond, Ky. Through rates, 451.
- Virginia cities from Roseboro and Garland, N. C., destined beyond. Lumber, 86.
- Virginia ports from Missouri River cities, for export. Grain products, 195.

- Warren, Minn., from Assiniboia, Saskatchewan, Canada. Oats, 22.
- Warren, R. I., to Rockford and Kentmere, Del., and points in the middle Atlantic states. Cotton piece goods, 411.
- Washington to New Mexico, Oklahoma, and Texas. Lumber and lumber products, 387.
- Washington from and to Portland, Oreg. Sample cases of brooms, 167.
- Washington to various destinations. Rental charges on refrigerator cars, 191.
- Washington, D. C., to various destinations. Postal cards; classification, 405.
- Waterloo, Iowa, from Virginia. Peanuts, 53.
- Wedron, Ill., to Salt Lake City, Utah. Sand, 483.
- Weldon, N. C., from New Orleans, La. Grain, grain screenings, and animal and poultry feeds, 654.
- West Albany Transfer, N. Y., from Bolivar, Pa., reconsigned in transit at Stuyvesant Falls, N. Y., to Hudson Upper, N. Y. Coal, 4.
- West Point, Ga., from eastern shore of Virginia. Potatoes, 750.
- West Pullman, Ill., to La Moure and Berlin, N. Dak. Commodity rates, 308.
- West Virginia from Florida. Clay, 275.
- West Virginia from Goes, Ohio. Black powder, 667.
- West Virginia from Harvard, Ill. Iron and steel articles, 67.
- West Virginia from Laona, Wis. Lumber and other forest products, 111.
- Western Canada to New Mexico, Oklahoma, and Texas. Lumber and lumber products, 387.
- Western territory. Classification of electric-light reflectors, 399.
- Wheeling, W. Va., from Cape Charles and other points on the eastern shore of Virginia. Vegetables and berries, 328.
- Wheeling, W. Va., from Florida. Clay, 275.
- Whiteside, Tenn., to Georgia. Bituminous coal, 180.
- Whiteville, La., from Louisiana, milled and reshipped to Constable Hook, N. J. Stave bolts, 165.
- Whitwell, Tenn., to Georgia. Bituminous coal, 180.
- Whitwell, Tenn., to Murfreesboro, Tenn. Coal, 745.
- Wilmington, Del., from Denton, N. C. Lumber, 549.
- Wilmington, N. C., from New Orleans, La. Grain, grain screenings, and animal and poultry feeds, 654.
- Wilmington, N. C., to Roanoke, Va. Lumber, 80.
- Wilmont, Minn., from and to Sheldon, Iowa. Soft drinks and empty bottles, 527.
- Winchester, Ky., from eastern points. Through rates; fourth section, 451.
- Winona, Miss., from Alabama mines. Bituminous coal, 311.
- Wisconsin from Cape Charles and other points on the eastern shore of Virginia. Vegetables and berries, 328.
- Wisconsin to C. F. A. territory, and New York, Pennsylvania, West Virginia, and Kentucky. Lumber and other forest products, 111.
- Wisconsin from Chicago, Ill. Wool and wool combings, 101.
- Wisconsin from Chicago, Ill., originating in Illinois. Grain, 124.
- Wisconsin from Gulf ports. Molasses, 435.
- Wisconsin from Illinois and Indiana mines. Bituminous coal, 603.
- Wisconsin, to Kansas, Missouri, Nebraska, North Dakota, and South Dakota. Cheese, 1.
- Witteville, Okla., to Texas, Arkansas, Missouri, and Kansas. Coal, 459.
- Woodstock, Ont., from Mocksville, N. C. Oak wagon hawns, 157.
- Wytheville, Va., from Grafton, W. Va. Contractors' outfit, 539.
- Ybor City, Fla., from Jacksonville, Fla. Sewer pipe; fourth section, 568.
- Zanesville, Ohio, from Florida. Clay, 275.

I N D E X .

[The number in parenthesis following citation indicates where paragraph occurs or subject is considered.]

ABSORPTION.

Practice of absorbing elevation charges on grain stored at Council Bluffs, Iowa, and reshipped to interstate destinations has been discontinued. *Iowa-Dakota Grain Co. v. I. C. R. R. Co.* 73 (76).

Where it is proposed to add to the line-haul rate a terminal charge which has been absorbed, it should be affirmatively shown not only that the charge, considered alone, is reasonable, but also that the through charge is reasonable. *Manure from Jersey City, N. J.* 465 (469).

Refusal of the St. L., I. M. & S. Ry. to absorb charges of tap line for switching logs to the mill at Huttig, Ark., or product of logs from mill to its rails does not discriminate against complainant. *Louisiana & Pine Bluffs Divisions*, 470 (473).

The reasonableness of charges maintained by one carrier can not be judged by the ability or inability of a connecting competitor to absorb them. *Nashville Switching*, 474 (482).

ADJUSTMENT OF RATES.

Necessary and proper changes in rates must be effected from time to time, although such changes may result in hardship and loss. *Reopening Fourth Section Applications*, 35 (39).

ADMINISTRATIVE RULINGS.

Conference Rulings Nos. 38, 220 (c), 286 (f), and 370, cited. *Jefferson Lumber Co. v. M. & O. R. R. Co.* 43 (44).

Conference Ruling 464, *Interest on Overcharge Claims*, cited and followed. *International Lumber Co. v. C. N. Ry. Co.* 283 (284).

Conference Rulings 36 and 218, re government rates, cited. *United States v. A. & V. Ry. Co.* 405 (406).

Rule 10 (a) and rule 74 of Tariff Circular 18-A, re publication of tariffs, cited. *Kern & Sons v. C., M. & St. P. Ry. Co.* 552 (554).

ADVANCE IN RATES.

In general: Reasons other than the elimination of water competition must be shown where it is sought to increase rail rates depressed without authority. *Reopening Fourth Section Applications*, 35 (40).

In general: The *Five Per Cent Case*, 32 I. C. C., 325, 331, did not approve any specific rate as reasonable in itself or as properly adjusted with respect to other rates, nor did it justify in advance any rate which might be published as a result thereof. The total rate must be justified and not the amount of the increase. *Globe Soap Co. v. A. & S. Ry. Co.*, 121 (123).

Cement: Proposed cancellation of joint commodity rates on portland cement from Ada, Okla., when forwarded via the St. L. & S. F. R. R., to points on the K. C., M. & O. Ry. of Texas not justified. Apprehension of respondents that the Texas commission might adopt retaliatory measures in the form of prescribing "emergency or penalty rates" for intrastate traffic unless rates from Ada were increased or withdrawn is no justification. *Cement to Texas Points*, 94, 100.

ADVANCE IN RATES—Continued.

- Chain:** Increased ratings resulting from changes in official classification descriptions and ratings of machine-finished steel belting or sprocket chains, found justified. Classification of Chain (No. 2), 499.
- Clay, kaolin:** Increased all-rail and rail-water-and-rail rates from Edgar and Okahumpka, Fla., to points in central freight association territory, and points in Pennsylvania and West Virginia, found justified. It is not shown that they are unreasonable or unduly prejudicial by comparison with rates from Georgia or import rates on English clay, nor are they shown to be inherently unreasonable. Clay from Florida, 275 (278).
- Coal:** Increased rates resulting from the cancellation of joint rates on coal from Witteville, Okla., to points in Texas and other states, found not justified, and reparation awarded. Poteau Coal & Mercantile Co. v. A. & S. Ry. Co. 459 (460, 461).
- Coal, bituminous:** Effective April 17, 1915, the N., C. & St. L., over the objection of the S. Ry., but acting under the latter's concurrence, made certain reductions from its mines to destinations in Georgia. The Southern finally withdrew its concurrence therein on the ground that the rates were unduly low and prejudiced mines on its own lines. Resulting combination rates held not justified, but an increase in rates from N., C. & St. L. mines to the amounts in effect prior to April 17, 1915, found justified. Coal and Coke from Bon Air, Tenn., and Other Points, 180.
- Coal, bituminous:** Proposed increased rates from mines in Illinois and Indiana to points in Illinois, Indiana, Wisconsin, and Michigan, found justified. Relative adjustment, financial condition of railroads, cost of operation, earnings, traffic density, market conditions, and market competition, considered. Indiana and Illinois Coal, 603.
- Cotton piece goods:** Increased rates on cotton piece goods in bales, effected by cancelling commodity rates and substituting therefor class rates, from New England points to points in New York, New Jersey, Pennsylvania, Delaware, and Maryland, not justified. Maximum to be observed as between certain points, prescribed. Bancroft & Sons Co. v. N. Y., N. H. & H. R. R. Co. 411, 417.
- Dyes, aniline and alizarine:** Cancellation of commodity rates on, from New York, N. Y., and adjacent points, to North Adams, Mass., and other points, which are said to be unreasonably low, thereby rendering applicable higher class rates, found justified. Removal of discrimination and elimination of fourth section departures also urged in justification. Dyes from New York, N. Y., 546, 547.
- Grain:** Cancellation of joint rates by way of Bridge Junction, Ark., from points in Kansas and Missouri to points in Arkansas south and west of and including Little Rock justified in part. Grain to Arkansas Points, 49.
- Grain, grain screenings, and animal and poultry feeds:** Cancellation of commodity rates on, from New Orleans, La., to points in Carolina territory found not justified. The only justification disclosed for higher rates from New Orleans proper than from Memphis is the difference in distance. Rates from New Orleans may properly be somewhat higher, but proposed rates, if allowed, would result in a spread which is not justified. Grain from New Orleans, La., 654 (657-658).
- Grain products:** Withdrawal of joint proportional rates on grain products to Virginia ports for export, maintained during the season of lake navigation, rests upon changed conditions which satisfy the requirements of the fourth section. Export Grain Products from Missouri River Points, 195 (200).

ADVANCE IN RATES—Continued.

Hides, green salted: Cancellation of commodity rates from Springfield, Ohio, to Chicago, Ill., and Milwaukee, Wis., thereby rendering applicable the fifth-class basis, not justified. Springfield has been included in the so-called Chicago-Ohio River adjustment for several years and no reason appears for excluding it. Present rates not shown to be unremunerative. Hides from Springfield, Ohio, 305, 307.

Lumber: Increased rates on lumber from Leesville and other points in Louisiana on the K. C. S. Ry. to Galveston and intermediate points in Texas on the G., C. & S. F. Ry., not justified. The record does not establish that present rates are unduly low via the direct route, and the proposed rates would place protestants at a serious disadvantage in competing with other mills similarly situated. Lumber from Louisiana Points, 268 (271).

Lumber and lumber articles: Increased rates from points in Oregon, Washington, Idaho, Montana, and western Canada to points in New Mexico, Oklahoma, and Texas, not justified. That the increased rates reestablish a former rate structure, and would, to a certain extent, establish a uniform adjustment, and that the normal basis of through rates to Oklahoma City is the combination on Kansas City, do not establish the reasonableness of such increased rates. Pacific Coast-Southwest Lumber, 387, 394.

Lumber and rough stave bolts: Cancellation of joint rates from stations on the Blytheville, Leachville & Arkansas Southern R. R. to stations on the St. Louis & San Francisco R. R., said to be unremunerative, found justified. Forest Products from Arkansas Points, 397.

Manure: Increased rates on manure from New York City and contiguous territory to points on the New Haven and its subsidiary, found not justified. Where it is proposed to add to the rate a terminal charge formerly absorbed, it should be shown not only that the terminal charge, considered alone, is reasonable, but also that the through charge made by adding the proposed terminal charge to the line-haul rate is reasonable. Manure from Jersey City, N. J., 465 (469).

Milk, cream, etc.: Proposed increased rates on milk, cream, evaporated milk, condensed milk, skim milk, buttermilk, and pot cheese, in carloads and less than carloads, not justified. Scale of rates on a per can basis prescribed. New England Milk Case, 699.

Molasses: Increased rates on domestic molasses (other than blackstrap) and on blackstrap from Louisiana and Texas points to various interstate destinations, the reason assigned in justification thereof being the maintenance of relationships long established, found justified except those to destination points specified. Molasses from Texas and Louisiana, 435, 440.

Peanuts: Fourth-class rates west of the Mississippi River on peanuts from Virginia to Iowa points found reasonable. When rates were reduced from third to fourth class, certain commodity rates were canceled, which resulted in increases to a few points. Complaint dismissed. Western Grocer Co. v. B. & O. R. R. Co., 53, 54.

Pipe, sewer: Increased proportional rates on, from Jacksonville, Fla., to Tampa, Fla., applicable to interstate shipments from points north of Jacksonville, found justified, except that the rate to Lakeland, Fla., will be reduced. Sewer Pipe from Jacksonville, Fla., 568.

Rice: Increased rates on clean rice from producing points in Texas, Louisiana, and Arkansas, from Gulf ports, and from Memphis, Tenn., to interstate destinations, except where proposed rates exceed fifth class or violate section 4, found justified. No justification offered for proposed increased rates on rough rice and rice products and same must be canceled. Rice from Texas and Louisiana, 285.

ADVANCE IN RATES—Continued.

Soap stock, cottonseed oil, tank bottoms, and inedible tallow: Defendants relied upon permission given in the *Five Per Cent Case*, 32 I. C. C., 325, 331, as justification of increases in rates from Arkansas, Louisiana, Missouri, Oklahoma, and Texas to Cincinnati, Ivorydale, and St. Bernard, Ohio, and failed to introduce any evidence in regard to the rates themselves. Case held open for further hearing. *Globe Soap Co. v. A. & S. Ry. Co.*, 121 (123).

Yarn, rope, and twine: Cancellation of commodity rates on fodder yarn, lath yarn, rope, and twine in carloads, and on fodder yarn and lath yarn in mixed carloads with agricultural implements to points in New England and Canada, restoring the fifth-class basis, found justified. *Lath Yarn from Auburn, N. Y.* 395.

ALLOWANCES. See also EQUALIZING TRANSPORTATION COSTS.

For a haul of 3 miles or less under the Commission's order, which is still in force, a tap line may receive a maximum allowance of \$3 per car. *Louisiana & Pine Bluffs Divisions*, 470 (471).

Demand for increased allowances to tap line, predicated on the fact that the movement between the mill and the junction involves an out-of-line haul of nearly a mile to a track scale, rejected. *Id.* (471-472).

ALL-RAIL RATES. See SEASON RATES.**ANY-QUANTITY RATES. See also CARLOAD AND LESS THAN CARLOAD.**

Any-quantity basis in effect in territory east of the Mississippi River and Chicago was considered in a former case and not disturbed. *Providence Fruit & Produce Exchange v. M., St. P. & S. S. M. Ry. Co.* 45 (46).

ARBITRARIES.

Rates from Cape Charles, Va., to Chicago, constructed on basis of arbitraries over the Philadelphia rates to Chicago, not found unreasonable. *Eastern Shore of Virginia Produce Exchange v. N. Y., P. & N. R. R. Co.* 328 (333).

ASSIGNMENT.

Where consignees who are entitled to reparation assign their interests to consignors, the latter will be entitled to reparation, and vice versa. *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.* 738 (740, 741).

ATTENDANTS. See CARETAKERS.**AVERAGE DISTANCE. See DISTANCE; GROUP RATES.****BAGGAGE.**

Baggage rules providing extra charges for any piece of baggage any dimension of which exceeds 45 inches, not found unreasonable or unjustly discriminatory as applied to flexible sample broom cases measuring 59 inches in length transported as baggage between Portland, Oreg., and points in Washington, Idaho, and Montana. *Portland Chamber of Commerce v. C., M. & St. P. Ry. Co.* 167.

BARGES.

Switching charge imposed at Paducah, Ky., on logs, bolts, and billets which were transported by barges to Paducah, there loaded upon cars, and switched to complainant's plant, found unjustly discriminatory. *Mutual Wheel Co. v. N., C. & St. L. Ry.* 612.

BILL OF LADING.

Provisions of defendants' live-stock contracts will be considered in connection with the general investigation now pending. *National Society of Record Assos. v. A. & R. R. R. Co.*, 347 (348).

BLANKET RATES.

Request that trunk line carriers generally be required to establish milling-in-transit arrangements on logs in connection with tap lines in lumber blanket-rate territory in the southwest denied. *Milling Logs in Transit on Tap Lines*, 597. Necessarily in a blanket adjustment of rates, differences in distance are largely disregarded. *Id.* (601).

BOAT LINES. *See also* JURISDICTION.

Proposed car-ferry service will be in the interest of the public and of advantage to the convenience and commerce of the people, and petitioner's application to institute such service granted. Ashtabula-Port Maitland Car-Ferry Service, 143.

Continued operation by the Maine Central Railroad of the Bath Ferry and of the Penobscot and Frenchman's Bay boat lines as at present conducted found not to be in contravention of the Panama Canal act. Maine Central Boat Lines, 272.

Boat lines on Lake George and Lake Champlain are operated in the interest of the public, and, so long as there is no material departure from present practices, their continued operation will be advantageous; and their continued operation by the Delaware & Hudson Company will neither exclude, prevent, nor reduce competition on routes by water. Delaware & Hudson Boat Lines, 297.

Petitioner does or may compete with its steamers on Lake Winnebago and Lake Memphremagog within the meaning of the act; but so long as their respective operations remain as at present the steamers are being operated in the interest of the public and are of advantage to the convenience and commerce of the people, and their continued operation and ownership will neither exclude, prevent, nor reduce competition on routes by water. Boston & Maine Boat Lines, 565.

Application of the Central Vermont Railway Company for permission to continue existing service by vessels between New York and New London, and to install a similar service between New York and Providence, granted. The existing service between New York and New London is, and proposed service between New York and Providence will be, of advantage to the convenience and commerce of the people, and will neither exclude, prevent, nor reduce competition on routes by water. Central Vermont Boat Lines, 589.

While ordinarily there might be some question as to the wisdom of passing upon an application for permission to install a water service in a case where the date of its inauguration is so uncertain, circumstances and conditions appearing of record justify action on that portion of petitioner's application. *Id.* (592).

BURDEN OF PROOF.

Burden of proof to show that a rate increased after January 1, 1910, is just and reasonable is not removed by a general permission of the Commission which did not approve any specific rate as reasonable in itself or as properly adjusted with respect to other rates; for it is the total rate which must be justified and not the amount of the increase. *Globe Soap Co. v. A. & S. Ry. Co.* 121 (123).

Burden of justifying the reasonableness and propriety of increased rates can not be sustained by simply showing that the increased rates would, to a certain extent, establish a uniform adjustment. *Pacific Coast-Southwest Lumber*, 387 (394).

CAR FERRY.

Proposed car-ferry service will be in the interest of the public and of advantage to the convenience and commerce of the people, and will neither exclude, prevent, nor reduce competition on the route by water under consideration, if properly operated. Application to institute such service granted. Ashtabula-Port Maitland Car-Ferry Service, 143.

CAR FITTING.

Refusal of defendants to provide cars specially equipped with hooks and racks for the transportation of chilled and frozen meats not found unreasonable or unduly prejudicial. *Frankfeld & Co. v. N. Y. O. R. R. Co.* 555.

CAR RENTAL CHARGES. *See* RENTAL.

CAR SERVICE RULES.

Carriers are justified in establishing car service rules which will insure prompt release of equipment. *Pittsburgh & Ohio Mining Co. v. B. & O. R. R. Co.* 408 (409).

CARETAKERS.

Tariff provisions compelling shippers to provide attendants for less-than-carload shipments of live stock held unreasonable and ordered canceled; but there are no objections to uniform and unambiguous provisions that shippers may at their option and expense furnish such attendants. *National Society of Record Assos. v. A. & R. R. R. Co.* 347 (356).

Rules governing free transportation of caretakers accompanying live stock in carloads from points in southwestern Minnesota and southeastern South Dakota to Sioux City, Iowa, appear to be unduly prejudicial in comparison with rules governing same to South St. Paul, Minn.; but evidence is too meager upon which to base a finding relative to proper rules for future, and case is assigned for further hearing. *Sioux City Live Stock Exchange v. C., St. P., M. & O. Ry. Co.* 418 (424).

CARLOAD AND LESS THAN CARLOAD.

In general: Where facts are sufficiently developed the rate for carload classes can be fairly adjusted through the percentage relationships to the first-class rates. Carriers are entitled to an adequate return for their services on less-than-carload traffic. *The Missouri River-Nebraska Cases*, 201 (256).

Butter: There is no such demand for a carload rating on butter as on lard. *Providence Fruit & Produce Exchange v. M., St. P. & S. S. M. Ry. Co.* 45 (47).

Live stock: There appears no reason why a lower valued animal in a less-than-carload shipment should take the rate applicable to one of higher value, merely because both are shipped in the same car at the same time. Rule held unreasonable and item should be canceled. *National Society of Record Assos. v. A. & R. R. R. Co.* 347 (353, 354).

Milk and cream: Shipments in carloads, iced by shipper, are less expensive to operate and should properly take a lower rate than shipments in less than carloads, but only so much lower as difference in service warrants. *New England Milk Case*, 699 (736).

Milk and cream: Carload rates should be provided for where the shipments are from one consignor to one consignee from one point of origin to one destination to be iced by shipper, at not more than 87½ per cent of the scale provided for less than carloads, including return of empty containers. *Id.* (736).

Motor cycles: Charges on, in less than carloads, found unreasonable to extent that they exceeded one and one-half times first-class rates. Reparation awarded. *Lawlor Cycle Co. v. C., M. & St. P. Ry. Co.* 171.

Wool: Reasonableness of the any-quantity ratings on wool, scoured, washed, combed, or brushed, and wool combings and wool noiles, governed by western classification, not passed upon; but these commodities, in carloads, should be given lower ratings in western classification than those applicable to same commodities in less than carloads. *Chicago Wool Co. v. C., M. & St. P. Ry. Co.* 101 (104).

CARS.

Refrigerator cars cost more than box cars, and it is not questioned that transportation in the former is more expensive than in the latter. Rental charge of \$5 per car per trip for use of refrigerator or insulated cars, when ordered by shippers, during months when protection is necessary, not found unlawful or unjustly discriminatory. *North Pacific Fruit Distributors v. N. P. Ry. Co.* 191 (193, 194).

CENTRAL FREIGHT ASSOCIATION TERRITORY.

As officially described by the central freight association. *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.* 738.

CHANGED CONDITIONS. See SECTION 4.**CIRCUITOUS ROUTES.**

Where circuitous lines are at a marked disadvantage in meeting competition of short lines, relief from the long-and-short-haul rule should be granted. *Tulsa Traffic Asso. v. A., T. & S. F. Ry. Co.* 9 (15).

CIRCUMSTANCES AND CONDITIONS.

It is well settled that unless circumstances and conditions affecting transportation to any two points are substantially similar the fact that one has lower rates than the other does not of itself constitute undue preference. *Tulsa Traffic Asso. v. A., T. & S. F. Ry. Co.* 9 (11-12).

CLASS AND COMMODITY RATES.

Class rates from New Orleans to Tulsa, Okla., and rates on certain commodities to Tulsa which are higher than those maintained to Joplin and Neosho, Mo., and other points, not found unreasonable. *Tulsa Traffic Asso. v. A., T. & S. F. Ry. Co.* 9.

Commission has not yet seen the way to establishing a standard scale of percentage relation which all classes should bear to the first-class rate because of the great variety in percentages which now exists, and the many conflicts which would result between existing scales and any percentage scale which might be prescribed. *Id.* (11).

Cancellation of commodity rates on aniline and alizarine dyes, rendering applicable higher class rates, found justified. *Dyes from New York, N. Y.*, 546.

CLASS RATES.

Peanuts: Fourth-class rates from Virginia to Marshalltown, Des Moines, and Waterloo, Iowa, found reasonable. The third-class basis formerly applied, and when the reduction was made from third to fourth class certain commodity rates were canceled which resulted in increases to a few points which had enjoyed commodity rates lower than fourth class. Complaint dismissed. *Western Grocer Co. v. B. & O. R. R. Co.* 53, 54.

Rates for the lower classes should be based upon the percentage relationship of classes prescribed by the Nebraska commission. *The Missouri River-Nebraska Cases*, 201 (257).

Class rates between Council Bluffs, Sioux City, St. Joseph, Kansas City, and Atchison and points in Nebraska found unreasonable in so far as they exceed the mileage scale of maximum class rates prescribed. *Id.* (261).

Less-than-carload rates on oil to Torrington, Wyo., and Henry, Nebr., from Omaha, should reflect the third-class rate adjustment. *Town of Torrington, Wyo., v. C., B. & Q. R. R. Co.* 512 (514).

Double first-class rate on l. c. l. shipments of mimeographs and addressing machines from Chicago, Ill., to Spokane, Wash., found unreasonable to extent that it exceeded one and one-half times first class. Reparation awarded. *Inland Seed Co. v. O.-W. R. R. & N. Co.* 517 (522).

CLASSIFICATION. See also PARTS.

In general: It is conceded by all parties of record that the same classification ratings should apply to shipments transported from all of the Missouri River cities and from cities in Nebraska with which they compete for the trade of that state. *The Missouri River-Nebraska Cases*, 201 (241).

In general: Unjust discriminations and undue prejudices in classification ratings and exceptions should be removed by applying the western classification and exceptions applicable on interstate traffic to transportation between complaining cities and points in Nebraska and between Omaha and other competing Nebraska cities and points in that state. *Id.* (260).

CLASSIFICATION—Continued.

- In general:** Reasonable classifications and rules should be established independently of rates. *National Society of Record Assos. v. A. & R. R. Co.* 347 (356).
- Cabinets, clothing:** Ratings found reasonable for show cases should be applied to clothing cabinets with glass doors, backs, and ends. Clothing cabinets with wooden backs and tops, glass doors, and glass and wooden ends when k. d. flat should not be rated higher than second class, less than carloads, rule 25, carloads. *National Commercial Fixture Mfrs. Asso. v. A. A. R. R. Co.* 484 (490).
- Cases, show:** Less-than-carload rating applicable to show cases set up found unreasonable to extent that it exceeds double first class; and exception made by the official classification committee in favor of so-called "display" cases should be eliminated. *Id.* (488).
- Cases, show:** With exceptions noted, present classification of show cases and show-case frames found reasonable; additional item covering interior arrangements for show cases found reasonable and should be established. *Id.* (489).
- Cases, wall:** Present less-than-carload ratings on wall cases found reasonable, but carload rating found unreasonable to extent that it exceeds rule 25. Other exceptions noted, but otherwise present classification of wall cases is found reasonable. *Id.* (492).
- Chain:** Changes in official classification descriptions and ratings of machine-finished steel belting or sprocket chains, found justified. *Classification of Chain* (No. 2), 499.
- Counters:** Present classification of counters found reasonable. "Wall counter bases" should properly be classified with counters. *National Commercial Fixture Mfrs. Asso. v. A. A. R. R. Co.* 484 (494).
- Drums, secondhand iron and steel:** Contention that secondhand articles should be rated lower than same articles when new not sustained. *Tex-O-Cide Chemical Co. v. T. & P. Ry. Co.* 594 (596).
- Fixtures, store:** Grouping of cabinets, counters, partitions, shelving, show cases, and wall cases under caption "store or office fixtures," not found unreasonable. *National Commercial Fixture Mfrs. Asso. v. A. A. R. R. Co.* 484 (486).
- Furniture, fiber:** Original findings that official classification rating of three times first class on fiber furniture in less than carloads from Jackson, Mich., to points in other states, where rates are governed by official classification, was unreasonable and unduly prejudicial, reversed on rehearing and complaint dismissed. *Michigan Seating Co. v. G. T. W. Ry. Co.* 503.
- Live stock, l. c. l.:** There are no differentiating circumstances or conditions in the three classification territories justifying varying increases above basic rates for increased values. *Id.* (354, 355).
- Molasses:** Both molasses and sugar are produced from sugar cane, but they differ materially, not only in their inherent characteristics, but in conditions and circumstances affecting and controlling their transportation. Molasses from Texas and Louisiana, 435 (443).
- Monuments:** Discrimination which previously existed in the application of a higher rating on monuments and parts than on rough, dressed, or polished granite used for other purposes has been removed. *Moore Granite & Monumental Works v. I. C. R. R. Co.* 77 (79).
- Motor cycles:** Rates charged on motor cycles in less than carloads from Milwaukee, Wis., to Middletown, Ohio, and Lincoln, Nebr., found unreasonable to extent that they exceeded one and one-half times the first-class rates. Reparation awarded. *Lawlor Cycle Co. v. C., M. & St. P. Ry. Co.* 171.

CLASSIFICATION—Continued.

Padding, cotton shoddy garment: Official classification first-class rating on less-than-carload shipments from Chicago to New York, and charges accruing thereunder, not found unreasonable. It is argued that a schedule of rates, graduated according to value, should be established; but value is not the sole controlling element in classification or rate making. *Western Felt Works v. Wabash R. R. Co.* 7, 8.

Partitions: Less-than-carload rating found unreasonable to extent that it exceeds second class, and carload rating of rule 25 found unreasonable to extent that it exceeds third class. *National Commercial Fixture Mfrs. Asso. v. A. A. R. R. Co.* 484 (495).

Reflectors, enameled: Western classification l. c. l. rating on electric light or lamp reflectors, in barrels or boxes, found unreasonable to extent that it exceeds ratings applicable under same classification on l. c. l. shipments or sheet-iron enameled ware, n. o. i. b. n., nested solid, or nested but not solid, in barrels or boxes. *Benjamin Electric Mfg. Co. v. A., T. & S. F. Ry. Co.* 399.

Postal cards, envelopes, and newspaper wrappers, stamped: First-class rating provided in southern classification on, when shipped for the account of the government on government bills of lading in cars protected by government locks and seals, minimum 30,000 pounds, found just and reasonable, and prescribed as maximum rating in official and western classification territories also. *United States v. A. & V. Ry. Co.* 405.

Shelving and shelving bases: Rating on shelving found reasonable. Less-than-carload rating on shelving bases found reasonable, but carload rating of rule 25 should be established. *National Commercial Fixture Mfrs. Asso. v. A. A. R. R. Co.* 484 (495).

Stamped articles: There is no classification analogy between stamped and unstamped articles. *United States v. A. & V. Ry. Co.* 405 (407).

Statue: A statue which constituted a minor but essential part of the monument with which it was shipped should have taken the rating provided for the monument. *Moore Granite & Monumental Works v. I. C. R. R. Co.* 77 (79).

Valves, iron, with motors attached: Rates charged on, from Pittsburgh, Pa., to San Francisco, Cal., not found unreasonable; and the record affords no basis for a finding with respect to the intrinsic reasonableness of the western classification rating which was legally applicable. *Alberger Pump & Condenser Co. v. A. V. Ry. Co.* 105 (108).

Wool: Reasonableness of ratings on scoured wool in western classification not determined; but wool, scoured, washed, combed, or brushed, and wool combings and wool noiles, in carloads, should be given lower ratings in western classification than those applicable to same commodities in less than carloads. *Chicago Wool Co. v. C., M. & St. P. Ry. Co.* 101 (104).

COAST TO COAST TRAFFIC.

Unattractive to steamship lines because of the exceptionally high prices obtained for ocean service between the United States and foreign countries. *Reopening Fourth Section Applications*, 35 (38).

COMBINATION RATES.

Rate on gum lumber from Morgan City, La., to Port Arthur, Tex., not found unreasonable as compared with a lower rate applicable only on shipments for Texas & New Orleans delivery, or as compared with a subsequently established rate via route of movement said to have been reduced solely for the purpose of enabling complainant to obtain reparation. *Waddell-Williams Lumber Co. v. M. L. & T. R. R. & S. S. Co.* 402.

COMBINATION RATES—Continued.

Combination rate on plate-iron culverts from Fargo, N. Dak., to Arnegard, N. Dak., via an interstate route, not found unreasonable. *North Dakota Metal Culvert Co. v. G. N. Ry. Co.* 537.

Where through rates are made by combination of local rates and one of these local rates is found to be unreasonable, it is inferable that through rates that are made by use of this unreasonable component are unreasonable. *Dallas Chamber of Commerce v. A. T. & S. F. Ry. Co.* 619 (643).

The mere fact that combination rates rather than joint rates apply on common black powder from Goes, Ohio, to points located on the Chesapeake & Ohio Railway in Virginia, West Virginia, and Kentucky is insufficient to show that such combination rates are unreasonable or unduly prejudicial. *Aetna Explosives Co. v. P., C., C. & St. L. Ry. Co.* 667 (668).

Rates on potatoes from eastern shore points to southeastern points found reasonable; but present rate to Norfolk is established upon a package basis, while rates south from Norfolk are generally published per 100 pounds. It would seem desirable that through rates be published upon a common basis. *Eastern Shore of Virginia Produce Exchange v. N. Y., P. & N. R. R. Co.* 750 (754, 755).

COMMERCIAL CONDITIONS.

It is not the function of this Commission to equalize commercial conditions or neutralize geographical advantages by such adjustments as will enable a shipper to compete in markets otherwise closed to him; especially under depressed market conditions. *Connor Lumber & Land Co. v. A., C. & Y. Ry. Co.* 111 (114).

It is not the function of the Commission to overcome commercial disadvantages of individuals or localities by the adjustment of transportation charges. *Hutchinson Traffic Bureau v. A., T. & S. F. Ry. Co.* 160 (164).

Commission may not properly permit its judgment upon the reasonableness of rates to be controlled wholly by purely commercial conditions. *Clay from Florida*, 275 (279).

Objections to increased rates on molasses grounded upon alleged commercial conditions are not competent or relevant to the issue of reasonableness. *Molasses from Texas and Louisiana*, 435 (442).

The Commission can not sanction a rate adjustment the sole purpose of which is to equalize disadvantages of location or manufacturing costs. *Milling Logs in Transit on Tap Lines*, 597 (600).

COMMODITY RATES.

Cement: Cancellation of joint commodity rates on portland cement from Ada, Okla., when forwarded via the St. L. & S. F. R. R. to points on the K. C., M. & O. Ry. of Texas, not justified. *Cement to Texas Points*, 94.

Fixtures, store: If commodity rates on articles involved are justified by sound transportation considerations, Commission should look for their retention, irrespective of classification descriptions. *National Commercial Fixture Mfrs. Asso. v. A. A. R. R. Co.* 484 (486).

Grain and grain products: Cancellation of commodity rates on grain, grain screenings, and animal and poultry feeds from New Orleans, La., to points in Carolina territory found not justified. *Grain from New Orleans, La.* 654.

Hides, green salted: Cancellation of commodity rates from Springfield, Ohio, to Chicago, Ill., and Milwaukee, Wis., thereby rendering applicable the fifth-class basis, not justified. *Hides from Springfield, Ohio*, 305.

COMMODITY RATES—Continued.

Texas: Certain carload commodity rates from St. Louis to points in northeast Texas found unreasonable to the extent of 5 cents per 100 pounds, and from Kansas City to same points to the extent that they are not as much as 5 cents per 100 pounds less than rates maintained from St. Louis. *Dallas Chamber of Commerce v. A., T. & S. F. Ry. Co.* 619.

Yarn, rope, and twine: Cancellation of commodity rates on fodder yarn, lath yarn, rope, and twine in carloads, and on fodder yarn and lath yarn in mixed carloads with agricultural implements, found justified. *Lath Yarn from Auburn, N. Y.* 395.

COMMON CARRIER.

A corporation which proposed, but only under certain contingencies, to become a common carrier is not covered by the wording of the Panama Canal act, and complainant, which has no vessels, terminals, or equipment is not a common carrier within the meaning of the amendment. *Charleston & Norfolk S. S. Co. v. C. & O. Ry. Co.* 382 (385, 386).

The Fort Smith, Poteau & Western Railway Company is a common carrier and is therefore entitled to receive divisions out of the joint rates established. *Poteau Coal & Mercantile Co. v. A. & S. Ry. Co.* 459 (463).

COMPARATIVE RATES.

Animals, crated: Rates on crated animals in excess of rates on animals shipped uncrated are unreasonable. *National Society of Record Assos. v. A. & R. R. R. Co.* 347 (357).

Butter: Perishable fruits and vegetables are not properly comparable with butter, nor are butter and lard properly comparable from a classification standpoint. *Providence Fruit & Produce Exchange v. M., St. P. & S. S. M. Ry. Co.* 45 (47).

Cotton piece goods: It does not appear that competition between unfinished cotton piece goods and dry goods is of such a character as properly to influence relative rates. *Bancroft & Sons Co. v. N. Y., N. H. & H. R. R. Co.* 411 (416).

Cream and milk: Rates on cream should bear relation to rates on milk, as they are analogous commodities; but cream may be classed among higher grade commodities of greater value and can fairly bear higher rates than milk. *New England Milk Case*, 699 (719, 720).

Cream and milk: Rates on cream should not exceed rates on milk by more than 25 per cent. *Id.* (735).

Hounds, oak wagon: Rates assessed on, from Mocksville, N. C., to Woodstock, Ont., found unreasonable to extent that they exceeded rates on oak lumber from and to same points. Reparation awarded. *Green & Son v. S. Ry. Co.* 157.

Molasses: No reason appears why molasses rates from New Orleans to territory involved should bear any definite or fixed relationship to rates on sugar. *Molasses from Texas and Louisiana*, 435 (443).

Molasses, blackstrap: It is not shown that the difference in rates on beet-sugar refuse may properly be considered as a just measure of the difference in rates on blackstrap molasses moving in a different direction over lines of different carriers and obviously under dissimilar circumstances and conditions. *Id.* (449).

Phosphate rock: Lump rock and ground rock distinguished. *Swift & Co. v. L. & N. R. R. Co.* 56.

Reflectors, enameled: Similarity of, to enameled ware, renders it inconsistent to rate them differently from such articles. *Benjamin Electric Mfg. Co. v. A., T. & S. F. Ry. Co.* 399 (401).

COMPARATIVE RATES—Continued.

Rice, clean: Comparisons of rates on clean rice, sugar, and green coffee are proper.

Other commodities are not sufficiently similar to rice to call for analysis of the comparisons thereof. Rice from Texas and Louisiana, 285 (288, 289).

Ties: No higher rates should be charged on ties than on lumber. In distinguishing between ties of high and low value, and between ties and lumber, there is no definite line of demarcation, and such differentiation as is asked by complainant is impracticable. Nashville Tie Co. v. L. & N. R. R. Co. 377 (379).

COMPETITION.**Market:**

Commercial conditions seem to be the main source of protestants' difficulties in meeting their chief competition with English clay, which conditions may not properly control Commission's judgment upon the reasonableness of rates. Clay from Florida, 275 (279).

Adjustment of rates on glass fruit jars and jelly glasses to Pacific Coast terminals was brought about largely through the desire of eastern manufacturers to better their competitive conditions and to discourage additional competition from new industries, and the relation is unduly prejudicial to complainants at Sand Springs, Okla. Kerr & Co. v. S. S. Ry. Co. 291 (294).

Commercial competition and interests of consumers are pertinent considerations in rate making. Galloway Coal Co. v. A. G. S. R. R. Co. 311 (320).

Market conditions doubtless are more strongly reflected than rates in the relative live-stock tonnage to Sioux City and South St. Paul. Sioux City Live Stock Exchange v. C., St. P., M. & O. Ry. Co. 418 (423).

Shippers at Kansas City are in direct competition at Texarkana and Shreveport with shippers at St. Louis, and the interests of the Kansas City Southern Ry. have been such as to render expedient the maintenance of the same rates from Kansas City that its competitors maintain from St. Louis. Dallas Chamber of Commerce v. A., T. & S. F. Ry. Co. 619 (636).

Rail and Boat Lines: *See also* BOAT LINES.

By reason of interownership of stock and participation in joint rates there is a possibility of competition established between interested railroads and the boat line which they seek to inaugurate. Ashtabula-Port Maitland Car-Ferry Service, 143 (144).

Competition between the Delaware & Hudson Company's rail line and its subsidiary water lines on Lakes George and Champlain will neither exclude, prevent, nor reduce competition on routes by water. Delaware & Hudson Boat Lines, 297 (304).

Railroad:

Rates based on Ohio River are made with reference to competition of different lines and with a view to the equalization of rates through different gateways. Nashville Lumbermen's Club v. L. & N. R. R. Co. 59 (61).

View that because defendants have met rates of their competitors at Norfolk, they should extend those rates to the eastern shore of Virginia, not sustained. Eastern Shore of Virginia Produce Exchange v. N. Y., P. & N. R. R. Co. 328 (334).

A charge of undue preference can not properly be predicated upon conditions resulting from controlling competition. *Id.* (334).

Rates from Omaha, South Omaha, and Council Bluffs to the Mississippi River are forced by competition and apparently yield a relatively low revenue. Transit at Kansas Points, 358 (366).

COMPETITION—Continued.**Water:**

One of the primary purposes of the act was to preserve and promote and not to destroy competition between carriers; and the clause of section 4 here involved was intended to act as a restraint against rail carriers reducing their rates between competitive points to such a level as to render water service between such points unremunerative. *Reopening Fourth Section Applications*, 35 (40).

Proposed withdrawal of joint proportional rates from Missouri River cities to Norfolk and Newport News, Va., rests upon changed conditions which satisfy the requirements of the fourth section, for the severance of lake lines from ownership and control of rail carriers has left the question of lake-and-rail and rail-lake-and-rail rates for the present season in some uncertainty. *Export Grain Products from Missouri River Points*, 195 (200).

In making the rate on rice from New Orleans to St. Louis the carriers had to consider water competition not only to St. Louis but to Memphis and points on the Ohio River. *Rice from Texas and Louisiana*, 285 (286).

Rates on sugar from New Orleans are made in competition with water rates therefrom and with rates from the north Atlantic seaboard. Carriers may if they choose meet this competition without the resulting rates becoming the gauge of rates to noncompetitive points or of rates on a commodity of similar transportation incidents. *Id.* (288).

Rates on lumber from Memphis to Ohio River points have been influenced first by actual and later by potential water competition. *Nashville Tie Co. v. L. & N. R. R. Co.* 377 (378).

At the present time no effective water competition exists between Fall River, Mass., and Philadelphia, Pa. *Bancroft & Sons Co. v. N. Y., N. H. & H. R. R. Co.* 411 (414).

COMPETITIVE CONDITIONS.

Rates made under competitive conditions can not properly become the bases of comparison with rates which are not subject to similar influences. *Corp. Comm. of Virginia v. C. & O. Ry. Co.* 24 (30).

Commission has recognized the right of carriers to create and to meet competitive conditions which could not be required under the act; a right which is subject to the limitation that unjust discrimination shall not be caused thereby. *The Missouri River-Nebraska Cases*, 201 (259).

COMPROMISE.

Change of relationship in rates from the west as between North Carolina and the Virginia cities was the outcome of a compromise and were not voluntary in any sense that would justify their consideration as evidence that former rates were unreasonable. *Corp. Comm. of Virginia v. C. & O. Ry. Co.* 24 (28).

CONFISCATORY RATES.

The act gives the Commission no authority to determine whether State-made rates are confiscatory. *The Missouri River-Nebraska Cases*, 201 (254).

CONGESTION.

There has been an extraordinary congestion of freight at the New York terminals of respondents, and proposed ascending scale of storage charges, intended to compel the removal of freight from piers and warehouses within a reasonable period after it is tendered to consignee for delivery, found justified. *New York Storage*, 265 (268).

CONNECTING LINES. See TERMINALS.**CONSIGNOR AND CONSIGNEE. See ASSIGNMENT; CONTRACT; PARTIES.**

CONTAINERS.

Carriers may make reasonable differences in rates and ratings dependent upon containers in which commodities are shipped. *Produce Distributors Co. v. L. V. R. R. Co.* 17 (18).

Charges on garlic in woven rattan baskets from New York, N. Y., to Seattle, Wash., based on the rate applicable to the same commodity in crates, found to have been without lawful tariff authority but not unreasonable. Same rate prescribed for future. *Id.* (19).

Rate on phosphate of lime in bags from Chicago Heights, Ill., to Denver, Colo., found unreasonable to extent that it exceeded the rate on this commodity when in barrels or boxes. Reparation awarded. *Hungarian Milling & Elevator Co. v. C. & E. I. R. R. Co.* 610.

Rates on milk and cream in bottles in cases should be established on the present relationship to rates in cans in conformity with rates found reasonable herein. *New England Milk Case*, 699 (737).

CONTRACT.

Whether complainant is ultimately legally responsible for a charge imposed by consignee carrier of fuel coal apparently depends upon an alleged contract of bargain and sale between complainant or its sales agent and the carrier, which is entirely beyond Commission's jurisdiction since the charge was not unlawfully imposed. *Marquette Coal Co. v. P. R. R. Co.* 4 (6).

A contract, entered into by a carrier, to make a particular stockyards its sole terminal for delivery and receipt of live stock, in common with all other contracts, must be disregarded if in any way it transgresses or conflicts with any provision of the act. *Nashville Abattoir, Hide & Melting Asso. v. L. & N. R. R. Co.* 134 (141).

The mere fact that complainants, because of outstanding contracts, were required to purchase their supply of pig iron at particular points can not be held to put a carrier under the obligation of moving the pig iron at less than a reasonable rate. *Chattanooga Implement & Mfg. Co. v. L. & N. R. R. Co.* 146 (149).

A controversy with a carrier for a balance due on the contract price of coal does not constitute such a claim as may be recovered by way of reparation. *Poteau Coal & Mercantile Co. v. A. & S. Ry. Co.* 459 (460).

Whatever may be the right or equities of consignors and consignees arising out of their contract as to variations in their agreed price for a commodity, dependent upon changes in rates, they present no question that is cognizable by this Commission, dealing, as it does, with the legal public obligations of the carrier, which is a stranger to the private contract. *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.* 738 (741).

To go into the matter of allowances between parties would lead the Commission away from the direct results of the act of the carrier in the exaction of an unreasonable rate into the domain of indirect and remote consequences and perhaps into questions of equity between the vendor and vendee. *Prusia Hardware Co. v. C., H. & D. Ry. Co.* 747 (748).

COST OF SERVICE.

Toll service must be more costly to perform than local service, especially as there is no return to the telephone company unless the person called responds. Through telephone rate from Flushing, N. Y., to Canaan, N. H., not found excessive for the service for which it is imposed. *Malone v. New York Telephone Co.*, 185 (187, 189).

Direct station costs of handling less-than-carload shipments are substantially greater than those of handling carloads. *The Missouri River-Nebraska cases*, 201 (256).

COST OF SERVICE—Continued.

A cost basis can not fairly be adopted at one point on a carrier's lines, while a nominal-charge basis is retained at all other points on its lines where connecting line switching is done, provided injury results. *Nashville Switching*, 474 (481).

COURTS.

Commission will not undertake to pass upon the merits of issues involved in the court case, which was brought by the state of Nebraska, nor will it draw any inferences from the fact that that case was discontinued prior to entry of decree. *The Missouri River-Nebraska Cases*, 201 (253).

CRATED ANIMALS.

Rates on crated animals in excess of rates on animals shipped uncrated are unreasonable; but a tariff requirement that small animals must be crated for shipment is not unreasonable. *National Society of Record Assos. v. A. & R. R. R. Co.* 347 (357).

CUMMINS AMENDMENT.

The Cummins amendment removed the effect of the *Croninger Case*, 226 U. S. 491, in states where contracts of limited liability had been held void and increased the liability of carriers in states where limitations on amount of the recovery had been held valid. *National Society of Record Assos. v. A. & R. R. R. Co.* 347 (352).

CUPPLES STATION.

There being no discrimination as between patrons of Cupples Station, there is no basis for finding that an unlawful discrimination exists in favor of tenants over outside shippers or in favor of tenants and outside shippers over users of team tracks, private sidings, or other public freight stations in St. Louis. *St. Louis (Cupples Station) Terminal Regulations*, 425 (433).

DAMAGES.

The Commission can not award reparation for damages such as counsel fees, loss of time, cost of prosecution of suits in courts, or value of shipments in controversy. *Peller v. P. R. R. Co.* 84 (86).

Fourth-section violations: The fact that a relation of rates, not being protected by an application, was violative of the fourth section, is not by itself a sufficient basis for an award of reparation. *Chattanooga Implement & Mfg. Co. v. L. & N. R. R. Co.* 146 (149).

Fourth-section violations: Damages can not be awarded on account of fourth section departures unless some violation of the first or third sections of the act also appears. *Young v. L. & N. R. R. Co.* 308 (310).

Rate held discriminatory under section 4; but there is no proof of discrimination otherwise and no reparation can be awarded. *Stimson v. S. Ry. Co.* 169 (170).

In view of the broad aspects of these cases and the general readjustment which is made necessary, reparation is denied. *The Missouri River-Nebraska Cases*, 201 (260).

A controversy with a carrier for a balance due on the contract price of coal does not constitute such a claim as may be recovered by way of reparation. *Poteau Coal & Mercantile Co. v. A. & S. Ry. Co.* 459 (460).

Classification of store fixtures as approved involves both increases and reductions, and affords no proper basis for awarding reparation. *National Commercial Fixture Mfrs. Asso. v. A. A. R. R. Co.* 484 (496).

Order: It is not the function of the Commission to determine whether one or more of several carriers from whom reparation is found due is solvent or insolvent. If a through rate, joint or combination, is found unreasonable and reparation is awarded, the order entered runs against the carriers, collectively, that participated in the transportation. *Riverside Mills v. A. & S. Steamboat Co.* 501 (502).

DAMAGES—Continued.

Reparation awarded on creosote oil from Moline, Ill., to Omaha, Nebr., the case having been reheard for the purpose of determining the lowest combination upon the basis of which reparation was due. *Lee Co. v. C., R. I. & P. Ry. Co.* 507. Neither voluntary reductions of rates by carriers nor compulsory reductions necessarily entitle shippers at unreduced rates to reparation. *Inland Seed Co. v. O.-W. R. R. & N. Co.* 517 (521).

Reparation on shipments from eastern defined territories to points intermediate to Pacific coast terminals which moved prior to the adjustment that followed the *Intermountain Cases*, denied. Reparation has frequently been denied when rates reduced have been in effect for long periods and when orders requiring reductions involved readjustments of rates throughout a large territory and affected shippers at many points who were not parties. *Id.* (521).

Reparation found due on corn and oats from Omaha, South Omaha, and Council Bluffs to Missouri points not awarded in original report as record was insufficient. Upon further hearing reparation awarded. *Omaha Grain Exchange v. C. & A. R. R. Co.* 523.

Reparation on shipments which moved to intermountain territory previous to an adjustment of rates following the *Intermountain Rate Cases*, denied. *Graham & Gila County Traffic Asso. v. A. E. R. R. Co.* 573 (588).

Switching charge found unjustly discriminatory, but there was no such proof of damage as would warrant an award of reparation. *Mutual Wheel Co. v. N., C. & St. L. Ry.* 612 (614).

The right to reparation is conditioned upon proof that claimant paid and bore the freight charges as freight charges and was damaged through a violation of the act. Complainant paid freight charges, but later charged them back to the shipper, and reparation is denied. *Goodman Mfg. Co. v. C., M. & St. P. Ry. Co.* 675 (676).

Second supplemental report issued to remove certain confusion which exists as to territory involved, proof of claim to be submitted, and parties entitled to reparation on shipments of pig iron sold f. o. b. destination, and to facilitate the disposition of reparation matters involved. *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.* 738.

Party who made shipment and paid freight charges as such found entitled to reparation irrespective of fact that an allowance was made to equalize the rate. *Prusia Hardware Co. v. C., H. & D. Ry. Co.* 747 (748).

DECLARATION OF VALUE. See **VALUE.**

DELIVERY.

Upon settlement of a dispute as to rate legally applicable shipments were offered by defendant without demand for demurrage charges, and it became complainant's duty to accept delivery or to instruct as to their disposition.. *Peller v. P. R. R. Co.* 84 (86).

Defendants' regulations and practices governing the delivery of live stock in Nashville are not shown to be unreasonable or unjustly discriminatory; but the L. & N. R. R. Co. will be expected to publish and file a tariff rule which will clearly differentiate the method of handling this traffic from that of handling other car-load traffic. *Nashville Abattoir, Hide & Melting Asso. v. L. & N. R. R. Co.* 134 (141).

A reasonable tender of freight at an accessible point must be made by carriers to consignees under the law. *St. Louis (Cupples Station) Terminal Regulations*, 425 (432).

DEMURRAGE.

Demurrage charges at Birmingham, Ala., on lumber to Avondale, Ala., a station within the switching limits of Birmingham, milled there and reshipped to interstate destinations, found unlawful. Payment of freight charges was not a prerequisite to release of cars to switching line, and defendant contracted to give Avondale delivery. Reparation awarded. *Advance Lumber Co. v. A., B. & A. R. R. Co.* 82, 83.

Demurrage and track storage charges on burned enamel ware from Shady Side, Ohio, to Pittsburgh, Pa., which accrued while cars were held pending investigation as to whether shipments consisted of enamel ware or scrap iron, found to have been improperly assessed; but those which accrued subsequent to settlement of the controversy held lawful. *Peller v. P. R. R. Co.* 84.

Where the reasonableness of established rates is disputed complainant is not entitled to a refund of demurrage charges which accrued because of his refusal to accept delivery pending settlement of the dispute; but where delivering carrier demands more than the lawfully established rate the consignee is released from obligation to pay demurrage while dispute continues. *Id.* (85.)

Reparation awarded for demurrage and drayage charges caused by misdelivery. *Robinson Clay Product Co. v. A., C. & Y. Ry. Co.* 177.

Demurrage charges represent in part compensation to carrier for use of its equipment, and in part a penalty imposed upon shippers for detention of cars. *Pittsburgh & Ohio Mining Co. v. B. & O. R. R. Co.* 408 (409).

Demurrage charges on coal held in cars for transshipment at Lorain, Ohio, not found unreasonable; and fact that other carriers reaching the lake ports published rules which shippers deemed more liberal is not proof that defendant's charges were unjustly discriminatory. *Id.* (410).

Demurrage rules under which demurrage accrued on three carloads of castings and lumber at East Moline, Ill., not found unreasonable, there being no showing that it was not practicable for complainant to finish unloading within the free time allowed; although defendant did not deny that its tracks were congested, or that some of the delay in constructing additional tracks was avoidable on its part. *Deere & Co. v. C., M. & St. P. Ry. Co.* 533, 534.

Demurrage charges collected for detention of a carload of hay at Baltimore, Md., not found unreasonable, and contention that it is unreasonable to allow 48 hours free time in which to load or unload and only 24 hours free time for re-shipment, not sustained. *Dinsmore & Co. v. P., B. & W. R. R. Co.* 618.

DESTINATIONS.

Designation of destination points to which particular rates shall apply in descending sequences of station numbers is unusual. *Du Pont de Nemours Powder Co. v. M. C. R. R. Co.* 71 (72).

DIFFERENTIALS.

Rates on lumber from Helen, Ga., to Cincinnati, Ohio, should not exceed those from Murphy, N. C., to Cincinnati by more than 3 cents per 100 pounds. *Byrd-Matthews Lumber Co. v. G. & N. W. R. R. Co.* 116 (120).

Outbound rates from Lincoln, Nebr., are equalized with Missouri River cities on basis of so-called Lincoln differentials; and conditions asserted to have arisen since those differentials were established give Lincoln a rate advantage on distribution to the extent of its outbound differentials under Omaha rates. *The Missouri River-Nebraska Cases*, 201 (220).

Differential adjustments can be prescribed only where unlawful discrimination is found and unlawful discrimination between different producing points competing in a common market can not be found unless the same carrier serves the common market and controls rates to it, or where the traffic moves a part of the way over the rails of the same carrier. *Galloway Coal Co. v. A. G. S. R. R. Co.* 311 (315).

DIFFERENTIALS—Continued.

The only way to establish differentials where entirely independent carriers serve a common market from competing producing points would be to fix maximum rates from some producing points and minimum rates from the others, and the latter is not within the Commission's authority. *Id.* (315).

Differential adjustment approved in *Bituminous Coal to Mississippi Valley Territory*, 39 I. C. C., 378, is fair to Alabama coal operators and will remove the unlawful discrimination against them. *Id.* (323, 327).

Rates on live stock from Torrington, Wyo., to Omaha should not exceed rates from Henry, Nebr., by more than 1 cent per 100 pounds. Rates on oil from Omaha to Torrington should not exceed rates to Henry by more than 2 cents per 100 pounds. *Town of Torrington, Wyo., v. C., B. & Q. R. R. Co.* 512 (513, 514).

DISCLOSING INFORMATION.

Prohibition contained in section 15 against disclosure of information is intended to secure to every shipper immunity from a disclosure of his business at the hands of a common carrier, and the mere absence of injury to complainants does not excuse defendants' failure to require their agent to conform to the requirements of the law. *Nashville Abattoir, Hide & Melting Assn. v. L. & N. R. R. Co.* 134 (137, 141).

DISCRIMINATION. See also ISSUE; PREFERENCES AND PREJUDICES.

Charges on contractors' outfits from Grayland, Ill., to Baltimore, Md., assessed in addition to the Chicago rate, held unjustly discriminatory within the meaning of section 2. *Bartlett Hayward Co. v. B. & O. R. R. Co.* 151 (155).

Test of unjust discrimination as between two competing points is to be found in an examination of the rates applicable from those points and also in the differing principles by which those rates may be made. *The Missouri River-Nebraska Cases*, 201 (259).

Unlawful discrimination between different producing points competing in a common market can not be found unless the same carrier serves the common market and controls rates to it from such producing points, or where the traffic moves a part of the way to the common market over the rails of the same carrier. *Galloway Coal Co. v. A. G. S. R. R. Co.* 311 (315).

Provisions of the act against unjust discrimination speak to carriers of the country individually and with respect to those things for which they are individually responsible, and not to the carriers as parts of a single great system. *Id.* (315).

Not every difference in rates to competing points from common points of origin constitutes unjust discrimination, and different switching charges at competing points may also be entirely equitable. *Nashville Switching*, 474 (482).

DISPUTE. See DEMURRAGE.**DISTANCE. See also GROUP RATES.**

The element of distance is an important matter to be considered in determining the reasonableness of rates in their relation to other rates with which they are compared, but distance alone is not controlling. *Corp. Comm. of Virginia v. C. & O. Ry. Co.* 24 (29).

Cancellation of joint rates on grain by way of one route where difference in distance in favor of the other is too substantial to be disregarded found justified. *Grain to Arkansas Points*, 49 (52).

A rate comparison measured by distance alone is not controlling in determining the issue of unjust discrimination against lower Missouri River cities. *The Missouri River-Nebraska Cases*, 201 (258-259).

Relative distances alone are not controlling, but carriers may not disregard all differences in distances in making rates. Groups can not be extended indefinitely. *Galloway Coal Co. v. A. G. S. R. R. Co.* 311 (320).

DISTANCE—Continued.

Necessarily in a blanket adjustment of rates differences in distance are largely disregarded. *Milling Logs in Transit on Tap Lines*, 597 (601).

While by reason of the difference in distance rates from New Orleans to points in Carolina territory may properly be somewhat higher than rates from Memphis, the proposed rates, if allowed, would result in a spread which is not justified. *Grain from New Orleans, La.* 654 (658).

DISTANCE RATES. See also MILEAGE RATES.

Maximum class rates between all of the Missouri River cities and points in Nebraska should be based upon actual distances and the first-class rate should not be higher than under the Iowa-Nebraska scale, except for distances less than 40 miles. *The Missouri River-Nebraska Cases*, 201. (257).

Reasonable scale of maximum rates in cents per can for transportation of milk, in less than carloads, including skim milk, buttermilk, and pot cheese, prescribed. *New England Milk Case*, 699 (733-734).

DISTURBANCE OF ADJUSTMENT.

Groups long maintained are presumably fair and are not to be disrupted unless substantial justice clearly requires it. Dissatisfied producers deprived of the benefit of their proximity to common markets must show that they are actually injured and by an unlawful discrimination. *Galloway Coal Co. v. A. G. S. R. R. Co.* 311 (320).

Changes in through rates from Cincinnati and Chicago to Louisiana points should be made without any undue or unnecessary disturbance of present relative adjustments. *Procter & Gamble Distributing Co. v. A. & V. Ry. Co.* 367 (372).

It must be assumed that in the readjustment of through rates on lard substitute from Macon, Ga., to Louisiana points carriers will give due consideration to the long standing relationship that has existed between shipping and receiving points. *Procter & Gamble Distributing Co. v. A. & V. Ry. Co.* 373 (376).

It is the Commission's duty to consider the propriety of rates to the northeast portion of Texas, and to make such finding as the circumstances appear to require, although such action may lead to further readjustments, and possibly to other complaints. *Dallas Chamber of Commerce v. A., T. & S. F. Ry. Co.* 619 (637).

DIVERSION. See RECONSIGNMENT.**DIVISIONS. See also ALLOWANCES.**

The allowance of smaller divisions to purchasing lines by carriers from Alabama than by the Illinois Central may enable purchasing lines to get their fuel coal delivered to them at equal rates from Alabama or western Kentucky and southern Illinois even though local rates to their junction point may be lower from Alabama; but this does not prove that the arrangement is inequitable where connecting carriers are different, serve different producing fields, and are active competitors. *Galloway Coal Co. v. A. G. S. R. R. Co.* 311 (325).

Divisions received by local lines in Mississippi on fuel coal purchased by them not shown to be unduly prejudicial to mines in northwestern Alabama. *Id.* (325).

Upon supplemental petition alleging that through routes and joint rates via routes formed by certain rail lines and the Port Huron & Duluth Steamship Company had been made effective in compliance with the Commission's order, but that parties had been unable to agree upon divisions, the proceeding was reopened and divisions prescribed. *Port Huron & Duluth S. S. Co. v. P. R. R. Co.* 335.

Extent to which carriers may be in accord as to divisions is a fact to be considered in determining the issues but does not limit the Commission's jurisdiction over divisions to a part only of the joint rate. *Id.* (337).

DIVISIONS—Continued.

The Fort Smith, Poteau & Western Railway Company is a common carrier and is entitled to receive divisions out of joint rates established. Carriers should renew their efforts to agree upon divisions. *Poteau Coal & Mercantile Co. v. A. & S. Ry. Co.* 459 (463, 464).

Original report prescribing divisions of joint rates on bituminous coal from Oak Hills, Colo., affirmed on rehearing with the modification that when the rate on nut, slack, and pea coal is the same as the rate on lump coal the Denver & Salt Lake Railroad shall receive a division on nut, slack, and pea coal of \$1.18 per ton. *Coal Rates from Oak Hills, Colo.*, 497.

Commission has no authority, under section 15, to prescribe divisions of joint rates except when such rates have been previously fixed by the Commission under its order and the parties thereto are in disagreement. *Morgantown & Kingwood Divisions*, 509.

If a carrier can make a better bargain with one connection than with another it may do so, and it is not for the Commission to equalize the results. *Id.* (511).

The Commission may examine and prescribe divisions in order to prevent excessive allowances in the nature of rebates which result in unjust discrimination in favor of and against shippers. *Id.* (511).

Divisions received by participating carriers are not controlling in determining the reasonableness of the through rate as a whole. *Dyes from New York, N. Y.*, 546 (549).

DRAYAGE.

Reparation awarded for demurrage and drayage charges caused by misdelivery. *Robinson Clay Product Co. v. A., C. & Y. Ry. Co.* 177.

Regulation that outside shippers shall employ a certain drayage company to remove their freight from the station is one whose lawfulness is gravely open to doubt and which should be promptly canceled, thereby permitting outside shippers their choice of agencies of wagon haul. *St. Louis (Cupples Station) Terminal Regulations*, 425 (433).

DUNNAGE.

Dunnage allowance in connection with carloads of sewer pipe canceled entirely and rate applicable to sewer pipe paid on dunnage used. *Sewer Pipe from Jacksonville, Fla.*, 568 (571).

EARNINGS. See also TON PER MILE.

Relative earning power of the milk traffic as compared or contrasted with the relative earning power of the passenger service or the freight service, taken separately, considered, and summary of calculations shown. *New England Milk Case*, 699 (708, 709).

EQUALIZATION OF RATES.

Policy of commercial equalization has been extensively followed in making interstate rates to Nebraska points from Missouri River cities, and from Nebraska centers of distribution to points within that state rate equalization has been required by the Nebraska commission. *The Missouri River-Nebraska Cases*, 201 (206, 207).

So long as their competitors in Nebraska are accorded equalized rates the lower Missouri River cities can not lawfully be denied whatever rate advantages would accrue from rate schedules made upon the same principle. *Id.* (259).

EQUALIZING TRANSPORTATION COSTS.

Differences in rates outbound from Council Bluffs and from Omaha to Nebraska points and in classification ratings have resulted in the equalization of freight charges to customers on goods shipped directly from Council Bluffs. Allowances for freight equalization are absorbed out of profits. *The Missouri River-Nebraska Cases*, 201 (212-213).

EQUALIZING TRANSPORTATION COSTS—Continued.

In order to retain their trade Sioux City shippers, in some instances, have been forced to make allowances from invoices to equalize transportation costs with competing cities. *Id.* (222).

To go into the matter of allowances between parties would lead the Commission away from the direct results of the act of the carrier in the exaction of an unreasonable rate into the domain of indirect and remote consequences and perhaps into questions of equity between the vendor and vendee. *Prusia Hardware Co. v. C., H. & D. Ry. Co.* 747 (748).

EQUIPMENT.

A consignee has no legal right to use a car as a warehouse; and it is to the interest of both carriers and shippers that cars be promptly released. *Pittsburgh & Ohio Mining Co. v. B. & O. R. R. Co.* 408 (409).

Where milk and cream are transported in freight cars in freight trains in carloads without ice and in less than carloads with ice, when necessary, the charge therefor should be based on rates not to exceed 75 per cent of those provided in the maximum scale prescribed for movements in passenger equipment in milk, passenger, or mixed trains. *New England Milk Case*, 699 (736).

ERROR.

Rate on box shooks from Smiths Mills, Me., to Newbridge, Del., found unreasonable. The rate asked applied to nearly all points in vicinity of Newbridge solely because of an error in tariff publication. Reparation awarded. *Du Pont de Nemours Powder Co. v. M. C. R. R. Co.*, 71, 72.

Error in waybill caused shipment to be misdelivered. Reparation awarded. *Robinson Clay Product Co. v. A., C. & Y. Ry. Co.*, 177.

EXPORT RATES.

Rate on wheat from East St. Louis, Ill., milled into flour at Cairo, and transported thence to Port Chalmette, La., for export, found unreasonable. Reparation awarded. *Cairo Milling Co. v. M. & O. R. R. Co.*, 20.

Withdrawal of joint proportional rates from Missouri River cities to Norfolk and Newport News, Va., on grain products for export, maintained during the season of lake navigation for the purpose of putting the Virginia ports on the same basis as Baltimore, found justified; and respondents should be left free to act in conjunction with other interested carriers in the future maintenance of such export rates. *Export Grain Products from Missouri River Points*, 195 (200).

FABRICATION IN TRANSIT. *See TRANSIT PRIVILEGES.*

FERRY.

Ferryboats of the Bath Ferry are possibly within the Panama Canal act technically, but their continued use and ownership by the Maine Central obviously violate none of its provisions. *Maine Central Boat Lines*, 272.

F. O. B.

Certain shipments, upon which reparation is due, were sold f. o. b. furnace, and reparation will be awarded upon the filing of proper papers. Consignors held to be entitled to reparation on shipments sold f. o. b. destination. *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.*, 738 (739-741).

FREE TIME.

Contention that it is unreasonable to allow 48 hours free time in which to load or unload and only 24 hours for reshipment, not sustained, and no evidence offered sufficient to warrant a change in the rules at Baltimore, Md. *Dinsmore & Co. v. P., B. & W. R. R. Co.*, 618.

FREE TRANSPORTATION. *See CARETAKERS.*

FREIGHT ALLOWANCES. *See EQUALIZING TRANSPORTATION COSTS.*

FREIGHT AND PASSENGER SERVICE. *See EARNINGS.*

GOVERNMENT RATES.

The rate or classification rating is the maximum which carriers may demand from the government. Southern classification first-class rating on postal cards, envelopes, and newspaper wrappers, stamped, prescribed as maximum rating in official and western also. *United States v. A. & V. Ry. Co.*, 405 (406, 407).

GROUP RATES.

No group adjustment can effect exact justice in rate making, and small disadvantages to one point or another incident to such adjustments do not constitute the undue prejudice made unlawful by section 3 of the act. *Connor Lumber & Land Co. v. A., C. & Y. Ry. Co.*, 111 (113).

Measured by distances to all gateways through which rates from the Wausau group apply to territory of destination, that group seems to be fairly and reasonably constructed, and fairly and reasonably to include Laona within its confines. *Id.* (113).

Group rates on flour from central Kansas points to points in New Mexico not found unreasonable or unduly prejudicial in favor of points in western Kansas and Oklahoma and eastern Colorado. While some readjustment of the large groups might result in a more consistent and equitable rate adjustment, the plans suggested would not effect any such result. *Hutchinson Traffic Bureau v. A., T. & S. F. Ry. Co.* 160 (164).

Groups can not be extended indefinitely, and discrimination inherent in all group adjustments must not be undue. Groups long maintained, however, are presumably fair and are not to be disrupted unless substantial justice clearly requires it. *Galloway Coal Co. v. A. G. S. R. R. Co.* 311 (320).

Dissatisfied producers deprived of the benefit of their proximity to common markets must show that they are actually injured and by an unjust and unlawful discrimination. *Id.* (320).

Where a rate group is so large as the Texas common-point territory, comprising an area of approximately 120,000 square miles, it may very well be that a rate which is entirely reasonable when applied to the average haul to points within the group is unreasonable when considered as applied to a haul to the nearer portion of the group to which the distance is materially less. *Dallas Chamber of Commerce v. A., T. & S. F. Ry. Co.* 619 (637).

Group rates can be considered just and reasonable only in so far as they do not effect unjust discrimination. *Id.* (644).

Carriers have found it necessary to depart from the Texas common-point adjustment on traffic from Kansas City to the Dallas and Fort Worth group, and record indicates that a like exception should be made in rates from St. Louis and Kansas City to northeast Texas. *Id.* (644).

Rate on brick from Roseville, Ohio, to Huntington, W. Va., not found unreasonable, but found unduly prejudicial. Zanesville on the north and Crooksville and New Lexington on the south are accorded the Zanesville group rate while Roseville is subjected to a higher basis. *Hydraulic-Press Brick Co. v. P. Co.* 669 (672).

HEATED CAR SERVICE.

Charges for heated car service in connection with shipments of cheese from points in Wisconsin to various destinations not found unreasonable. *Cheese Dealer's Asso. Co. v. A., T. & S. F. Ry. Co.* 1.

ICING.

Reasonableness of charge made for ice furnished in connection with any-quantity rates of carriers in official classification territory not determined. *Providence Fruit & Produce Exchange v. M., St. P. & S. S. M. Ry. Co.* 45 (48).

ICING—Continued.

Rates should be established for transportation of less-than-carload shipments of milk, etc., which do not require ice or other special handling while en route on a somewhat lower basis than herein prescribed. *New England Milk Case*, 699 (736).

IMPORT RATES.

Proposed increased rates on kaolin clay from Edgar and Okahumpka, Fla., to points in central freight association territory, and points in Pennsylvania and West Virginia, not unreasonable by comparison with rates from Georgia or the import rates on English clay. *Clay from Florida*, 275 (278).

INSULATED CARS.

Rental charge of \$5 per car per trip, when ordered by shippers, during months when a heated car service was necessary, held not unlawful or unjustly discriminatory. *North Pacific Fruit Distributors v. N. P. Ry. Co.* 191.

INSURANCE.

Commission does not feel that it should, in prescribing rates on higher valued animals, by amounts in excess of basic rates, consider only the greater insurance risk as determined by the amount of loss and damage claims which past experience indicates will result. *National Society of Record Assos. v. A. & R. R. R. Co.* 347 (355).

INTERCHANGE OF SERVICE.

Compensation on a tariff rate or charge basis better benefits an arrangement for interchange of service than one for physical use. *Louisville Board of Trade v. L. & N. R. R. Co.* 679 (686).

INTEREST ON OVERCHARGE CLAIMS.

Conference ruling No. 464 cited and followed. *International Lumber Co. v. C. N. Ry. Co.* 283 (284).

INTERMOUNTAIN RATE CASES.

Reparation on shipments which moved from the east to points intermediate to Pacific coast terminals prior to the adjustment of rates following the *Intermountain Cases*, denied. *Inland Seed Co. v. O.-W. R. R. & N. Co.* 517.

ISSUE.

Many markets and carriers interested in issues involved were not aware that fourth section applications had been set for hearing, and they are not passed upon. *Western Grocer Co. v. B. & O. R. R. Co.* 53 (55).

Pleadings gave no notice that the issue of divisions would be raised, and only two carriers were heard although other carriers participate in the transportation and are interested in the apportionment of the rates. Carriers left to renew their efforts to agree. *Poteau Coal & Mercantile Co. v. A. & S. Ry. Co.* 459 (464).

Question as to whether cars furnished are properly cleaned does not appear in complaints with sufficient definiteness to place carriers upon their defense. *Frankfeld & Co. v. N. Y. C. R. R. Co.* 555 (559).

Where there is an allegation that rates are unjustly discriminatory, but no attempt to point out the character of the alleged discrimination, nor any prayer for the removal of any discrimination, no question of unjust discrimination under section 2, or of undue preference and prejudice under section 3, is properly raised by the record. *Graham & Gila County Traffic Asso. v. A. E. R. R. Co.* 573 (574).

JOINT RATES.

In view of the fact that the through combination rate on butter from Minneapolis, Minn., to Providence, R. I., is not found unreasonable no useful purpose would be served by requiring the publication of present rates as a joint rate. *Providence Fruit & Produce Exchange v. M., St. P. & S. S. M. Ry. Co.*, 45 (48).

JOINT RATES—Continued.

Cancellation of, on grain from points in Kansas and Missouri on the St. L. & S. F. R. R. by way of Bridge Junction, Ark., to points in Arkansas on the C., R. I. & P. Ry. justified in part. Grain to Arkansas Points, 49.

Cancellation of joint rates on bituminous coal from mines on the N., C. & St. L. to points in Georgia not justified; but the Southern Railway has justified an increase to the former basis of joint rates decreased over its protest. Coal and Coke from Bon Air, Tenn., and Other Points, 180 (184).

Joint rate assessed on lumber from Jacksonville, Fla., to North Wales, Pa., was higher than the rate which the customary method of constructing through rates would have given which was applicable via other routes and subsequently applied via route of movement, and reparation awarded on account of unreasonable charges. Lukens Lumber Co. v. A. C. L. R. R. Co. 295.

A joint rate is an entirety and ordinarily it would be difficult if not impossible to fix just divisions unless the entire rate and interests of all participating carriers were considered. Port Huron & Duluth S. S. Co. v. P. R. R. Co. 335 (337).

Cancellation of joint rates from stations on the B., L. & A. S. R. R. to stations on the St. L. & S. F. R. R., said to be unremunerative, found justified. Forest Products from Arkansas Points, 397.

Joint rates on coal from Witteville, Okla., to points in Texas and other states were canceled, but were subsequently reinstated by voluntary action of the carriers. Charges based on combination of intermediate rates during periods when joint rates were not in effect found unreasonable and reparation awarded. Poteau Coal & Mercantile Co. v. A. & S. Ry. Co. 459 (460, 461).

Joint rate on rolled oats from Keokuk, Iowa, to Denver and Pueblo, Colo., not found unreasonable as compared with lower rates on rolled oats in western trunk line and trans-Missouri territories, and on corn and its products between Keokuk and Colorado common points. Purity Oats Co. v. C., B. & Q. R. R. Co. 531, 532.

The mere fact that combination rates rather than joint rates apply on common black powder from Goes, Ohio, to points on the C. & O. Ry. is insufficient to show that such combination rates are unreasonable. Etna Explosives Co. v. P., C., C. & St. L. Ry. Co. 667, 668.

Cancellation of, on fruits and vegetables from producing points on the St. Louis, Brownsville & Mexico Railway, applicable via Odem, Tex., found justified. The route via Houston is reasonable. Fruits and Vegetables from Texas Points, 673.

It would seem desirable that through rates be published upon a common basis, and defendants will be expected to establish joint rates on potatoes from eastern shore points to southeastern territory on basis of combination of rates to and from Norfolk. Eastern Shore of Virginia Produce Exchange v. N. Y., P. & N. R. R. Co. 750 (755).

JURISDICTION.

Court decisions, rendered before the Commission was invested with jurisdiction over "all matters relating to or connected with the receiving, handling, transferring, storing, and delivery of property," can not be said to limit the Commission's power to direct the removal of unjust discrimination or to prescribe reasonable rules and practices. Nashville Abattoir, Hide & Melting Asso. v. L. & N. R. R. Co. 134 (139).

Where a transportation service has been rendered for which no tariff authority exists and where the shipper has paid the sum demanded by the carrier for the service, the question as to what would have been a reasonable charge is within the Commission's jurisdiction. Sulzberger & Sons Co. v. M., St. P. & S. S. M. Ry. Co. 173 (174).

JURISDICTION—Continued.

Whether Nebraska intrastate rates yield the carriers a fair return upon property devoted to intrastate traffic is a question for the courts; but the Commission may require the maintenance of reasonable maximum class rates and reasonable classification ratings for interstate transportation, and to require the removal of any unjust discriminations which may be found to exist. *The Missouri River-Nebraska Cases*, 201 (253).

The position is wholly indefensible that this Commission must inquire into an issue as to which it has no jurisdiction for the purpose of determining a question as to which it has exclusive jurisdiction. *Id.* (254).

Although Lake George is wholly within the state of New York the steamboat company is engaged in interstate commerce, and under the terms of the Panama Canal act no room is left for any controversy on the question as to the Commission's jurisdiction over that water service. *Delaware & Hudson Boat Lines*, 297 (305).

A corporation which proposed, but only under certain contingencies, to become a common carrier is not covered by the wording of the amendment (Panama Canal Act). Commission is not vested with authority to require the initiation of proportional rates by rail carriers in connection with a proposed carrier by water not equipped in any way for the receipt and carriage of goods. *Charleston & Norfolk S. S. Co. v. C. & O. Ry. Co.* 382 (385, 386).

Commission has authority to prescribe reasonable ratings on government property involved although, under section 22, the carrier and the government may agree upon some other rate. *United States v. A. & V. Ry. Co.* 405 (406).

Contention that the Commission has jurisdiction to fix divisions because complainant's joint rates were involved in *The Five Per Cent Case*, not sustained. Such rates were not before the Commission in the sense that their individual reasonableness was involved. *Morgantown & Kingwood Divisions*, 509 (511).

No application for permission to continue operation of boat, which has a Canadian registry and touches but one port in the United States, was filed prior to July 1, 1914; and in examining the facts disclosed of record the Commission must not be understood as establishing by this course any precedent on question of jurisdiction to enter an order upon an application filed after July 1, 1914. *Boston & Maine Boat Lines*, 565 (567).

It is not within the Commission's authority to establish through routes and joint rates in a proceeding which does not involve the specific question. *Graham & Gila County Traffic Asso. v. A. E. R. R. Co.* 573 (578).

Bolts and billets which originated in Kentucky and moved water and rail intrastate are beyond Commission's jurisdiction, and the fact that practically all of them were manufactured into club-turned spokes and later shipped to Moline, Ill., does not cause jurisdiction to attach to the antecedent intrastate switching movement. Switching at Paducah as a part of interstate transportation is subject to Commission's jurisdiction. *Mutual Wheel Co. v. N., O. & St. L. Ry.* 612 (613).

LAKE-AND-RAIL RATES. See SEASON RATES.**LAKE LINES.**

Severance of lake lines from ownership and control of rail carriers has left the question of lake-and-rail and rail-lake-and-rail rates for the present season in some uncertainty. *Export Grain Products from Missouri River Points*, 195 (200).

LEASED-CAR SYSTEM.

Under which carrier transports in both directions a milk car between designated points of origin and destination for a specified charge per annum, and basis for computing specific rates applicable to carload shipments moving in passenger or milk trains, discussed. *New England Milk Case*, 699 (703, 704).

Undoubted tendency of, is to create and perpetuate a monopoly of the milk transportation business in the hands of those who operate leased cars. *Id.* (723).

Charges and regulations maintained by respondents, applicable to shipments of milk and cream under the leased-car system, unduly prefer users thereof, and unduly prejudice shippers of same commodities in less-than-carload lots. Proposed schedules ordered canceled. *Id.* (731).

LEGAL RATES.

Coal from Bolivar, Pa., to West Albany Transfer, N. Y., thence reconsigned to Stuyvesant Falls, N. Y., via Hudson, moved to Stuyvesant Falls through Hudson and Hudson Upper, N. Y., at a combination rate based on Hudson instead of Hudson Upper. The consignee carrier not being a party to the rate to Hudson Upper, the rate based on Hudson was the only rate legally applicable. *Marquette Coal Co. v. P. R. R. Co.* 4, 6.

The consequences of a practice in particular cases can not determine the rate legally applicable. *Id.* (6).

The inbound intrastate rate to Council Bluffs, used as one component of the through rate on corn from interior Iowa points to final interstate destination, was not lawfully applicable; and it is clear that unjust discrimination would never have been alleged if carriers had always observed their legal rates. *Iowa-Dakota Grain Co. v. I. C. R. R. Co.* 73 (76).

Demurrage and track storage charges which accrued while cars were held pending investigation into character of shipments, found unlawful. *Peller v. P. R. R. Co.* 84.

Although shipments from Baltimore to Grayland, Ill., were not consigned to or intended for the use of the company upon whose tracks they were delivered, the rates legally applicable were the flat Chicago rates, as the tariffs, which provided for delivery upon the industry tracks of that company, contain no limitation relative to the ownership or use of the shipments. Reparation awarded. *Bartlett Hayward Co. v. B. & O. R. R. Co.* 151 (154).

LIMITATION OF ACTION.

The original complaint attacked only local and proportional rates up to Virginia cities. Joint rates applicable on lumber from Roseboro and Garland, N. C., to points north of Virginia cities were not attacked until petition for rehearing was filed, more than two years after shipments moved, and claim for reparation is barred by the statute of limitation. *Cherokee Lumber Co. v. A. C. L. R. R. Co.* 86 (87).

Complainant failed to file its formal complaint within two years after its claim accrued, or within a reasonable time after notice that the claim was of such nature that it could not be determined informally, and claim must therefore be regarded as having been abandoned. *Swift & Co. v. S. Ry. Co.* 93; *Bruner Co. v. S. Ry. Co.* 549 (550); *Havana Metal Wheel Co. v. O., P. & St. L. Ry. Co.* 677.

LIMITATION OF LIABILITY. *See CUMMINS AMENDMENT.*

LIVE-STOCK CONTRACT. *See BILL OF LADING.*

LOADING AND UNLOADING.

Exceptional instances where car is placed in the lower level directly adjacent to the store door of certain tenants, and where loading and unloading is done on the track level, held unlawful and should be immediately discontinued. Loading and unloading should be at the expense of the shipper or consignee in the ordinary way. St. Louis (Cupples Station) Terminal Regulations, 425 (433-434).

LOCAL RATES.

Grain originating in Illinois, shipped to Chicago, there stored in elevators and subsequently shipped by rail, or via lake, to interstate destinations, or sold on the Chicago exchange and reconsigned from inspection tracks to Indiana Harbor, Roby, or Hammond, Ind., is subject to local intrastate rates for the intrastate movement to Chicago. Illinois Grain to Chicago, 124 (126, 127, 132).

Grain from Illinois points of origin on the E., J. & E. Ry., shipped via an interstate route to Chicago and South Chicago, there unloaded into elevators, and subsequently shipped from Chicago by lake, is subject to local interstate rates to Chicago. Id. (127, 132).

LOCATION.

Geographically Harvard, Ill., is not within so-called percentage or prorating territory and therefore is beyond the direct influence of conditions which prevail from Mississippi crossings, but defendants have voluntarily placed it in prorating territory. Hunt-Helm-Ferris & Co. v. A. A. R. R. Co. 67 (68).

Lower eastbound lumber rates from points located upon or near the bay shore are controlled by central freight association lines through their car-ferry routes. Connor Lumber & Land Co. v. A., C. & Y. Ry. Co. 111 (114).

The Commission has no power to require carriers to remove the disabilities of geographical location by rate equalizations. The Missouri River-Nebraska Cases, 201 (259).

The more favorable location of Omaha with respect to sources of supply of grain largely used by Atchison and Leavenworth millers is a natural advantage which this Commission may not properly require carrier to equalize in freight rates. Transit at Kansas Points, 358 (365).

The geographical positions of Texarkana and Shreveport entitle them to lower rates than Dallas and Fort Worth from a very large part of defined territories. Dallas Chamber of Commerce v. A., T. & S. F. Ry. Co. 619 (635).

LONG AND SHORT HAUL.

Arizona points: Maintenance of rates on high explosives from San Francisco and other points in California to El Paso which are lower than rates to intermediate points, found justified, and application for fourth section relief, granted. Graham & Gila County Traffic Asso. v. A. E. R. R. Co. 573 (588).

Danville, Va.: Rates on lumber from Lela and Eleanor, Ga., to Lynchburg, Va., are only a part of a general adjustment of lumber rates under which rates to Virginia cities uniformly are lower than to adjacent intermediate points in Carolina territory. No finding made relative to fourth section applications affecting rates to Danville. Chattahoochee Lumber Co. v. A. C. L. R. R. Co. 541 (542, 543).

Fall River, Mass.: Rate on cotton-piece goods in bales from Fall River to Philadelphia does not conform to the long-and-short haul provision, the rate to Newark, N. J., an intermediate point, being higher. Bancroft & Sons Co. v. N. Y., N. H. & H. R. R. Co. 411 (417).

LONG AND SHORT HAUL—Continued.

- Fountain, Colo.: Charges on 16 carloads of range cattle consigned from Monahans, Tex., to Gillette, Wyo., and reconsigned en route to Fountain, found to have been in violation of the long-and-short-haul rule, the rate to Denver being lower. Reparation awarded. *Prey Bros. & Cooper Live Stock Comm. Co. v. T. & P. Ry. Co.* 658.
- Havana, Ill.: Rates on lumber from Rome, Miss., to Havana, Ill., higher than rates to Peoria, a farther distant point, were not protected by proper application and defendants should immediately effect a proper adjustment. *Havana Metal Wheel Co. v. C., P. & St. L. Ry. Co.* 677 (678).
- Huntingburg, Ind.: Authority to continue rates on lumber from Rockport, Rock Hill, Troy, Tell City, and Cannelton, Ind., to Shelbyville, Ind., which are lower than rates from Huntingburg and other intermediate points, denied. There being no proof of discrimination other than under section 4, no reparation can be awarded. *Stimson v. S. Ry. Co.* 169, 170.
- Huttig, Ark.: Authority to continue rates on furniture, cement, and stoves from St. Louis, and on structural steel from Memphis to Litroe, La., which are lower than rates to Huttig and other intermediate points, denied. *Union Saw Mill Co. v. St. L., I. M. & S. Ry. Co.* 661 (665).
- Intermountain rates: Low rates on schedule C commodities, etc., unduly prefer coast points and unjustly discriminate against intermediate points, and certain fourth section orders rescinded. *Reopening Fourth Section Applications*, 35 (42).
- Jacksonville, Fla.: Authority to continue proportional rates on sewer pipe from Jacksonville, Fla., when from beyond, to Tampa, Port Tampa, and Ybor City, Fla., lower than rates to intermediate points, denied, the evidence relative to water competition being too indefinite to justify the existing disparities. *Sewer Pipe from Jacksonville, Fla.*, 568 (571, 572).
- La Moure and Berlin, N. Dak.: Authority to continue class rates from Chicago, Ill., and Burlington, Iowa, to Edgeley, N. Dak., which are lower than rates applicable to La Moure and Berlin and other intermediate points, denied. *Young v. L. & N. R. R. Co.* 308.
- Leesville, La.: Proposed increased rates on lumber from Leesville and other points in Louisiana to Galveston and intermediate points in Texas, which would increase the discrimination between the intermediate and more distant points, not justified. *Lumber from Louisiana Points*, 268 (271).
- Louisiana points: Matter of rates alleged to be departures from the long-and-short-haul rule reserved for further consideration. *Procter & Gamble Distributing Co. v. A. & V. Ry. Co.* 367 (370).
- Macon, Ga., to Louisiana: Matter of through rates on lard substitute in contravention of the long-and-short-haul rule reserved for further consideration. *Procter & Gamble Distributing Co. v. A. & V. Ry. Co.* 373 (375-376).
- Murfreesboro, Tenn.: Rate on coal, interstate, from Whitwell and Orme, Tenn., to Murfreesboro higher than the rate to Nashville, found unlawful. Reparation awarded. *Christy & Huggins Co. v. N., C. & St. L. Ry.* 745.
- Oakdale, Cal.: Rate on coal from Chicago, Ill., to Oakdale not found unreasonable; and it is not in violation of the long-and-short-haul rule, as shipments from Chicago to Stockton, Cal., by way of the Santa Fe would not pass through Oakdale. *Berry Coal & Coke Co. v. C., R. I. & P. Ry. Co.* 175 (176).
- Sheldon, Iowa: Rates on soft drinks from Sheldon to various Minnesota points and on empty bottles returned to Sheldon higher than rates from and to Sioux City and other Iowa points were protected by appropriate fourth section applications. *Sheldon Bottling Works v. C., R. I. & P. Ry. Co.* 527 (528).

LONG AND SHORT HAUL—Continued.

Tulsa, Okla.: Authority to continue lower rates on classes and on sugar, coffee, and molasses from New Orleans to Joplin and Neosho, Mo., than are maintained to Tulsa should be granted, provided present rates to Tulsa are not exceeded. *Tulsa Traffic Asso. v. A., T. & S. F. Ry. Co.* 9 (15).

Warren, Minn.: Rate on oats from Assiniboia, Sask., Canada, to Warren found unreasonable to extent that it exceeded the rate applicable to Duluth, a farther distant point. *Spaulding Elevator Co. v. C. P. Ry. Co.* 22.

Winchester, Ky.: Relief from requirements of the fourth section in connection with rates from the east to Louisville & Nashville stations intermediate to Winchester, Ky., denied. *Richmond Commercial Club v. L. & N. R. R. Co.* 451 (458).

LONG HAUL.

Proposed routes from points on the St. L. & S. F. R. R. to Gulf ports are practicable, and the mere fact that over them Oklahoma City is not intermediate to New Orleans from certain points of origin and that protestant no longer would receive transit is not sufficient to deprive the Frisco of its long haul. *Export Grain to Gulf Ports*, 280 (282).

LOW-GRADE COMMODITY.

Reasonableness of rates on low-grade commodities is not to be gauged by the ability or inability of shippers to market their products with profit. *Nashville Tie Co. v. L. & N. R. R. Co.* 377 (381).

LOW RATES.

Kansas City is so situated with reference to Chicago and St. Louis, and carrier competition for traffic to and from those trade centers was and is so keen, that it has been accorded comparatively low rates. *Tulsa Traffic Asso. v. A., T. & S. F. Ry. Co.* 9 (11).

The relatively low rates from the west to Virginia cities were made under competitive conditions, and can not properly become the bases of comparison with rates from Virginia cities to points not subject to similar influences. *Corp. Comm. of Virginia v. C. & O. Ry. Co.* 24 (30).

It appears that under both the Nebraska distance tariff and the Iowa-Nebraska scale the base rates are too low to cover direct terminal costs, general expenses, taxes, depreciation, and return upon property. *The Missouri River-Nebraska Cases*, 201 (256).

Rates on glass fruit jars and jelly glasses from Muncie, Ind., and Washington, Pa., to Pacific Coast terminals are admittedly low, and the adjustment is unduly prejudicial to Sand Springs, Okla. *Kerr & Co. v. S. S. Ry. Co.* 291 (294).

Rates on lumber and lumber articles to destinations in Texas and Oklahoma do not appear to be unduly low. *Pacific Coast-Southwest Lumber*, 387 (394).

A rate may be nonconfiscatory and at the same time too low to be reasonably remunerative. *Sioux City Live Stock Exchange v. C., St. P., M. & O. Ry. Co.* 418 (420).

Brick is desirable traffic from the standpoint of loading, density, value, risk, volume, and other considerations, which tend to determine the reasonableness of rates, and should be accorded low rates in comparison with most other traffic. *Hydraulic-Press Brick Co. v. P. Co.* 669 (672).

Milk traffic of the Boston & Maine under present rates is not, on the whole, remunerative, and rates are generally lower than Commission would be justified in prescribing. *New England Milk Case*, 699 (712, 720).

MAP

Railroad connections of complaining Missouri River cities on traffic into the state of Nebraska. *The Missouri River-Nebraska Cases*, 201 (210).

MAP—Continued.

Eastern shore of Virginia and Norfolk and routes leading therefrom. *Eastern Shore of Virginia Produce Exchange v. N. Y., P. & N. R. R. Co.* 328 (330).

Rail-lake-and-rail routes, New York to Duluth. *Port Huron & Duluth S. S. Co. v. P. R. R. Co.* 335 (345).

Illustrating the rate adjustment to central Kentucky from the Ohio River showing present and former names of lines acquired by the L. & N. and other carriers. *Richmond Commercial Club v. L. & N. R. R. Co.* 451 (452).

Showing various groups of origin and destination groups in Texas. Different territories of origin are grouped and rates from these groups are made by adding or subtracting fixed differentials to or from St. Louis rates. *Dallas Chamber of Commerce v. A., T. & S. F. Ry. Co.* 619 (624).

MARKET COMPETITION. *See* **COMPETITION (MARKET).**

MARKETS.

It is not the function of this Commission to equalize commercial conditions or neutralize geographical advantages by such adjustments as will enable a shipper to compete in markets otherwise closed to him, especially under depressed market conditions. *Connor Lumber & Land Co. v. A., C. & Y. Ry. Co.* 111 (114).

Consumers may properly have the widest possible market consistent with justice to carriers, and to that end and also in their own interests carriers may, within reasonable limits, as a matter of traffic policy, accord competing producing centers located at different distances from common centers of consumption identical rates. *Galloway Coal Co. v. A. G. S. R. R. Co.* 311 (320).

Market fluctuations have more to do with the price obtained for flour than does the cost price of wheat. *Transit at Kansas Points*, 358 (364).

Freight rates alone are not determinative of the direction of the live-stock movement from points involved. Market conditions doubtless are more strongly reflected than rates in the relative tonnage to Sioux City and South St. Paul. *Sioux City Live Stock Exchange v. C., St. P., M. & O. Ry. Co.* 418 (423).

MAXIMUM RATES.

Rates prescribed by this Commission are maximum rates and may be reduced to meet competition. *The Missouri River-Nebraska Cases*, 201 (256).

MEASURE OF RATES.

Rates made under competitive conditions can not properly become the bases of comparison with rates not subject to similar influences. *Corp. Comm. of Virginia v. C. & O. Ry. Co.* 24 (30).

Carriers may meet water competition without resulting rates becoming the gauge of rates to noncompetitive points or of rates on a commodity of similar transportation incidents. *Rice from Texas and Louisiana*, 285 (288).

Establishment of reasonable classifications, regulations, and practices should precede the determination of the measure of rates. *National Society of Record Assos. v. A. & R. R. R. Co.* 347 (355).

MILEAGE RATES.

Scale of reasonable maximum class rates for application between Sioux City, Council Bluffs, St. Joseph, Kansas City, and Atchison and points in Nebraska, for distances up to 700 miles, prescribed. *The Missouri River-Nebraska Cases*, 201 (261).

Scale of maximum rates in cents per can for transportation of milk, in less than carloads, including skim milk, buttermilk, and pot cheese, in milk, passenger, and mixed freight and passenger trains, in milk or refrigerator cars, heated in winter and iced in summer, including return of empty containers, prescribed. *New England Milk Case*, 699 (733-734).

MILK AND CREAM SUPPLY.

The natural tendency to concentration of the milk and cream supply of cities in the hands of a few large dealers ought not to be accelerated by preferential charges and regulations of carriers applicable to and governing the transportation of the traffic. *New England Milk Case*, 699 (724).

MINIMUM RATES.

The only way to establish differentials where entirely independent carriers serve a common market from competing producing points would be to fix maximum rates from some producing points and minimum rates from others, and the latter is not within the Commission's authority. *Galloway Coal Co. v. A. G. S. R. R. Co.* 311 (315).

MINIMUM WEIGHT.

Fixtures, store; Minimum of 12,000 pounds is extremely low for official classification territory, but this minimum should be preserved in the interest of uniformity. *National Commercial Fixture Mfrs. Asso. v. A. A. R. R. Co.* 484 (496).

Live stock in less than carloads: Reasonable minimum weights prescribed. Crated animals should move at the same minimum weights as uncrated, and young hogs, sheep, and goats should take the same weight as the grown animal. *National Society of Record Assos. v. A. & R. R. R. Co.* 347 (351).

Milk and cream: The minimum provision should be made to conform to the ability of shippers to load cars and in no instance should exceed the loading capacity, including the weight of ice. *New England Milk Case*, 699 (736).

Sand: Rate of 52 cents on sand, minimum 40,000 pounds, from Wedron, Ill., to Salt Lake City, Utah, not found unreasonable. Charges on a similar shipment at present rate of 40 cents, minimum 80,000 pounds, would exceed charges collected. *Wedron White Sand Co. v. C., B. & Q. R. R. Co.* 483, 484.

MISQUOTATION OF RATES.

Complaint alleging that rate on sand from Wedron, Ill., to Salt Lake City, Utah, was unreasonable, complainant having been misquoted a lower rate by the initial carrier's agent prior to the movement of the shipment. dismissed. *Wedron White Sand Co. v. C., B. & Q. R. R. Co.* 483.

MISROUTING.

Lumber from Taylorsville and Bridgewater, N. C., through Potomac Yard, Va., to Jersey City and Newark, N. J., routed by way of P. R. R., but without specification of any rate or junction in bill of lading, not misrouted although lower rate applied by way of Pinner's Point; but shipment from Elkin, N. C., to New York, N. Y., routed "Sou. care of Pa. delivery," should have moved by way of Pinner's Point and was misrouted. *American Woods Corp. v. S. Ry. Co.* 63 (64).

Shipments of coal from Plymouth, Pa., billed to Sharon, Ill., were moved to Geneseo, Ill., to nearest railroad delivery point, and thence back hauled to Chicago upon representations of complainant that coal was intended for delivery at Peoria, which proved to be a mistake; Held, not misrouting as the original misconsignment to Geneseo was due to error of complainant's agent, and as the back-haul movement to Chicago was due to a mutual mistake of fact for which complainant was primarily responsible. *Thorne, Neale & Co. v. Wabash R. R. Co.* 88, 90.

Car of pig iron from Ironaton, Ala., to Chattanooga, Tenn., was delivered to the L. & N. without routing instructions and should have been sent over the cheapest available route. Reparation awarded. *Chattanooga Implement & Mfg. Co. v. L. & N. R. R. Co.* 146 (149).

MISROUTING—Continued.

Bill of lading covering sewer pipe from Akron, Ohio, to Chicago, Ill., showed "43rd St. Team Track, Chicago, Ill.," as destination, "W. & L. E.-I. C." as the route; but in the way bill the word "track" was misspelled "tracj," and the W. & L. E., unjustifiably assuming that the last two letters designated Chicago Junction Ry., turned the shipment over to that carrier instead of to the Illinois Central for delivery; the W. & L. E. is, therefore, responsible for the resulting damages, notwithstanding the initial carrier's error in billing. *Robinson Clay Product Co. v. A., C. & Y. Ry. Co.* 177, 179.

Lumber from Embree, S. C., to Trenton, N. J., routed by shipper "Penna. R. R.," and moved by way of Potomac Yard, Va., not misrouted. If consignor had inserted in bill of lading the rate applicable through Pinner's Point, it would have been the initial carrier's duty to inquire of shipper what route was desired. *Bruner Co. v. S. Ry. Co.* 549 (551).

Lumber from Denton, N. C., to Wilmington, Del., routed by shipper "P. R. R.," and moved by way of Potomac Yard, Va., held misrouted. Routing was incomplete as there is no connection between the initial carrier and the lines of the Pennsylvania system, and it was the duty of the initial carrier to route the shipment by way of Pinner's Point. *Id.* (551).

Lumber from Huttig, Ark., to Elgin, Okla., found to have been misrouted. Conflict between routing instructions and rate named in bill of lading made it the duty of the initial carrier to obtain further and definite instructions from consignor, and its failure to perform its duty renders it liable for additional charges resulting from misrouting. *Union Saw Mill Co. v. St. L., I. M. & S. Ry. Co.* 661, 666.

MIXED CARLOADS.

Reparation awarded on account of unreasonable charges on a mixed carload of doors, balusters, moldings, rough lumber, dressed lumber, medicine cabinets, and panel backs from Bristol, Tenn.-Va., to Passaic, N. J., *Bristol Door & Lumber Co. v. S. Ry. Co.* 69.

Provision should be made for mixed shipments of milk and cream in carloads; rates to be made on the basis of the per can rates for each commodity in carloads, subject to the minimum provided for milk. *New England Milk Case*, 699 (737).

NASHVILLE TERMINALS.

Valuation of Nashville Terminals property. *Nashville Switching*, 474 (479).

NONAGENCY STATION.

Rates on yellow-pine lumber from Climax, Ala., a nonagency station 2 miles north of Lisman, Ala., to Nashville, Tenn., found unreasonable and reasonable rate prescribed. Reparation awarded. *Boyd v. A., T. & N. R. R. Co.* 535.

OPERATING RETURNS.

Statement compiled from returns contained in annual reports filed with the Commission by roads serving Texas territory for years ended June 30, 1913, 1914, 1915. *Dallas Chamber of Commerce v. A., T. & S. F. Ry. Co.* 619 (640).

OUT OF LINE HAUL.

Contention that tap line is entitled to compensation for an out of line haul of nearly a mile to a track scale, not sustained. *Louisiana & Pine Bluffs Divisions*, 470 (471).

OVERCHARGES.

Oats from Assiniboia, Saskatchewan, Canada, to Warren, Minn., found to have been overcharged. Rate lawfully applicable found unreasonable and reparation awarded. *Spaulding Elevator Co. v. C. P. Ry. Co.* 22.

OVERCHARGES—Continued.

Reparation awarded on account of overcharges on lumber from Carloss Spur, Ala., to Chicago and Indianapolis, dressed in transit at Northport, Ala. The legal rate from Carloss Spur to Northport should have applied. *Jefferson Lumber Co. v. M. & O. R. R. Co.* 43.

Two carloads of lumber from Statesville, N. C., to Jersey City, N. J., found to have been overcharged and reparation awarded. *American Woods Corp. v. S. Ry. Co.* 63 (64).

Reparation awarded, with interest, on account of overcharges on lumber from Beaudette, Minn., to Sheboygan, Wis., and Belvidere, Ill., following *Conference Ruling No. 464*, which holds that carriers should pay interest on all unsettled claims for overcharges from the date the charges are improperly collected. *International Lumber Co. v. C. N. Ry. Co.* 283.

Two less-than-carload shipments of electric-locomotive wheels on axles with hub attachments from Phildia, Iowa, to Chicago, Ill., found to have been overcharged. Reparation not awarded because complainant failed to show damage. *Goodman Mfg. Co. v. C., M. & St. P. Ry. Co.* 675 (676).

OVERPRODUCTION.

The well-known unprosperous condition of the coal-mining industry in Illinois and Indiana is largely due to over production. *Indiana and Illinois Coal*, 603 (608).

OWNERSHIP.

Carrier's ownership or operation of a plant for treatment of ties can not affect its right and obligation to charge just and reasonable rates. *Nashville Tie Co. v. L. & N. R. R. Co.* 377 (378).

PACKING. See CONTAINERS.**PANAMA CANAL.**

Obstructions to canal traffic caused by slides, and consequent withdrawal of ships from coast to coast business for other purposes, referred to. *Reopening Fourth Section Applications*, 35 (37).

Shipping via the canal has been greatly restricted by the diversion of boats to other services. *Kerr & Co. v. S. S. Ry. Co.* 291 (293).

PANAMA CANAL ACT. See also BOAT LINES; JURISDICTION.

A corporation which proposes, but only under certain contingencies, to become a common carrier is not covered by the wording of the amendment of August 24, 1912 (Panama Canal act). Paragraphs (a) and (c) construed. *Charleston & Norfolk S. S. Co. v. C. & O. Ry. Co.* 382 (385).

PAPER RATES.

Rate on sulphuric acid from Grasselli, Ala., to Cincinnati, Ohio, not found unreasonable. The shipment involved was moved for the purpose of this case, and was the only shipment moved between these points since 1911. *Grasselli Chemical Co. v. L. & N. R. R. Co.* 109 (110).

PARTIES.

Certain participating carriers not made parties defendant. Any order for reparation will be directed against the participating carriers who are named as defendants, but carriers not parties defendant may join defendants in paying reparation. *Green & Son v. S. Ry. Co.* 157 (159).

Nonjoinder of necessary party defendant precludes an order for the future. *Malone v. New York Telephone Co.* 185 (189).

If a through rate, joint or combination, is found unreasonable and reparation is awarded, the order entered runs against the carriers, collectively, that participated in the transportation. It is not necessary that the order state separately the amount due from each and every carrier. *Riverside Mills v. A. & S. Steamboat Co.* 501 (502).

PARTIES—Continued.

Where consignees who are entitled to reparation assign their interests to consignors, the latter will be entitled to reparation. Consignors held to be entitled to reparation on shipments sold f. o. b. destination under contracts which present no question that is cognizable by this Commission. *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.* 738 (740, 741).

PARTS.

Official classification provided in substance that when parts or pieces constituting one or more complete articles are shipped under one bill of lading at one time, by one shipper, to one consignee and destination, they would be charged for at the rate provided for the complete article; and a statue which constituted a minor but essential part of a monument should have taken the rating provided for the monument. *Moore Granite & Monumental Works v. I. C. R. R. Co.* 77 (79).

PAST RATES.

When an important and long-standing relation is sought to be changed by carriers, justification therefor must be clear and convincing. *Procter & Gamble Distributing Co. v. A. & V. Ry. Co.* 367 (372).

In the readjustment of through rates on lard substitute from Macon, Ga., to Louisiana points carriers will give due consideration to the long-standing relationship. *Procter & Gamble Distributing Co. v. A. & V. Ry. Co.* 373 (376).

While the fact that a rate or body of rates has been in effect for a considerable period of time may be strongly persuasive of the reasonableness of such a rate or rates, the mere reestablishment of a former rate structure is insufficient to satisfy the requirements of the statute. *Pacific Coast-Southwest Lumber*, 387 (394).

Reparation has frequently been denied when rates reduced have been in effect for long periods and when orders requiring reductions involved readjustments of rates throughout a large territory and affected shippers at many points who were not parties to the proceedings. *Inland Seed Co. v. O.-W. R. R. & N. Co.* 517 (521).

PER CAN RATES.

Leased-car system of charges on milk and cream found unlawful and a reasonable scale of maximum rates in cents per can prescribed. *New England Milk Case*, 699 (731, 733).

PERCENTAGE RATES.

Commission has not yet seen its way to establishing a standard scale of percentage relation which all classes should bear to the first-class rate. *Tulsa Traffic Asso. v. A. T. & S. F. Ry. Co.* 9 (11).

Harvard, Ill., has been placed in prorating territory and accorded the Rockford basis of rates, which satisfies the complaint. *Hunt-Helm-Ferris & Co. v. A. A. R. R. Co.* 67 (68).

The New York-Chicago rates are basic rates for the percentage scale in central freight association territory and also fix the Philadelphia and Baltimore rates. *Eastern Shore of Virginia Produce Exchange v. N. Y., P. & N. R. R. Co.* 328 (333).

PERISHABLE FREIGHT.

Butter is a highly perishable commodity which requires expedited service and must be handled in refrigerator cars. *Providence Fruit & Produce Exchange v. M., St. P. & S. S. M. Ry. Co.* 43 (48).

PORT TO PORT RATES.

Upon issuance of an order in the investigation of the boat line between New York and New London, operated by the New England S. S. Co., an order will be entered herein requiring petitioner to publish and file its port to port rates. *Central Vermont Boat Lines*, 589 (593).

POWER OF COMMISSION. *See also* JURISDICTION.

The Commission acts only by virtue of powers conferred by the Congress. *Charleston & Norfolk S. S. Co. v. C. & O. Ry. Co.* 382 (386).

PREFERENCES AND PREJUDICES. *See also* ISSUES.**Articles:**

Molasses: Record devoid of any persuasive evidence that any unjust discrimination results from the maintenance of higher rates on molasses than on sugar. *Molasses from Texas and Louisiana*, 435 (443).

Ties: Complaint alleging that rates on ties from points on lines of the L. & N. are unduly discriminatory in that the rates are in no wise proportional according to value to rates on other forest products, dismissed. *Nashville Tie Co. v. L. & N. R. R. Co.* 377.

Localities:

In general: It is well settled that unless circumstances and conditions affecting transportation to any two points are substantially similar the fact that one has lower rates than the other does not of itself constitute undue preference. *Tulsa Traffic Asso. v. A., T. & S. F. Ry. Co.* 9 (11-12).

In general: A charge of undue preference can not properly be predicated upon conditions resulting from controlling competition. *Eastern Shore of Virginia Produce Exchange v. N. Y., P. & N. R. R. Co.* 328 (334).

Alabama coal mines: Relative adjustment of rates on bituminous coal from mines in southern Illinois, western Kentucky, and northwestern Alabama to Memphis and other points in southwestern Tennessee not found unduly prejudicial to mines in northwestern Alabama. *Galloway Coal Co. v. A. G. S. R. R. Co.* 311.

Alabama coal mines: Rate adjustment held unduly prejudicial to Alabama operators in favor of operators in western Kentucky and southern Illinois, and Alabama mines taking base rates maintained to Mississippi and Louisiana east of the Mississippi River should have a substantial differential advantage at nearly all points in Mississippi and at all points in eastern Louisiana. *Id.* (323).

Alabama coal mines: Relative adjustment of rates on coal to points in southwestern Arkansas, Louisiana west of the Mississippi River, and southeastern Texas not found unduly prejudicial to mines in northwestern Alabama. *Id.* (327).

Benton, Ark.: Rate on yellow-pine lumber from Benton to Memphis, Tenn., not found unreasonable or unduly prejudicial in comparison with a lower rate from Little Rock. *Lena Lumber Co. v. C., R. I. & P. Ry. Co.* 515.

Burlington, Wis.: Rates on sand and gravel from Burlington by way of the C., M. & St. P. Ry. to Chicago found unduly prejudicial to the extent that it exceeds the rate from Beloit, Janesville, Waukesha, Fontana, and other Wisconsin points. *Burlington Sand & Gravel Co. v. C., M. & St. P. Ry. Co.* 90.

Central Kansas points: Group rates on flour from, to points in New Mexico not found unduly prejudicial to these points in favor of points in western Kansas and Oklahoma and eastern Colorado. *Hutchinson Traffic Bureau v. A., T. & S. F. Ry. Co.* 160.

Chicago, Ill.: Maintenance of a lower rate to Hammond, Ind., than to Chicago on lump phosphate rock was unduly prejudicial to complainant, but discrimination has been removed and is not shown to have been injurious to complainant. *Swift & Co. v. L. & N. R. R. Co.* 56 (58).

Cincinnati, Ohio: Maintenance of higher through rates from Cincinnati to points in Louisiana than from Chicago to same points is unjustly discriminatory. *Procter & Gamble Distributing Co. v. A. & V. Ry. Co.* 367 (372).

PREFERENCES AND PREJUDICES—Continued.

Localities—Continued.

Council Bluffs, Iowa: That the adjustment of rates from Council Bluffs and from Omaha to Nebraska points unjustly discriminates against Council Bluffs in favor of Omaha is conceded by all parties of record. *The Missouri River-Nebraska Cases*, 201 (205, 212).

Danville, Va.: Rates on lumber from Lela and Eleanor, Ga., to Danville, not found unduly prejudicial in comparison with rates to more distant points, such as Lynchburg. *Chattahoochee Lumber Co. v. A. C. L. R. R. Co.* 541.

Eastern shore points: Rates on vegetables from points in Accomac and Northampton counties, Va., to central freight association territory and other points, not found unduly prejudicial to complainant in favor of Norfolk. *Eastern Shore of Virginia Produce Exchange v. N. Y., P. & N. R. R. Co.* 328.

Eastern shore points: Rates on potatoes from points on the New York, Philadelphia & Norfolk Railroad in Accomac and Northampton counties, Va., to points in southeastern territory not found unreasonable or unduly preferential. *Eastern shore of Virginia Produce Exchange v. N. Y., P. & N. R. R. Co.* 750.

Grasselli, Ala.: Rate on sulphuric acid from Grasselli to Cincinnati, Ohio, not found unduly prejudicial in comparison with the rate from Copperhill, Tenn. *Grasselli Chemical Co. v. L. & N. R. R. Co.* 109.

Harvard, Ill.: Rates on iron and steel articles from Harvard to points in central freight association territory higher than obtained from Rock Falls and Sterling, Ill., not found unjustly discriminatory. *Hunt-Helm-Ferris & Co. v. A. A. R. R. Co.* 67 (68).

Helen, Ga.: Adjustment of rates on lumber to Cincinnati, Ohio, and other crossings from Helen, Ga., and from Murphy, N. C., and other North Carolina points found unduly prejudicial to Helen, and rates from Helen not exceeding those from Murphy by more than 3 cents prescribed. *Byrd-Matthews Lumber Co. v. G. & N. W. R. R. Co.* 116.

Laona, Wis.: Rates on lumber from Wisconsin points to central freight association territory and other points found to be controlled by central freight association lines, and lower rates from Green Bay shore points than from Laona are not found unduly prejudicial to Laona. *Connor Lumber & Land Co. v. A., C. & Y. Ry. Co.* 111.

Missouri River cities: Defendants ordered to cease and desist from the undue preferences and undue prejudices and disadvantages found to exist in the relation of class rates and classification ratings applicable to interstate and intrastate transportation to points in Nebraska from Council Bluffs, Sioux City, St. Joseph, Kansas City, and Atchison, and from Omaha and other Nebraska cities, respectively. *The Missouri River-Nebraska Cases*, 201.

Nashville, Tenn.: Rates based on Ohio River are made with reference to competition of different lines and with a view to the equalization of rates through different gateways, and because of different circumstances can not be said to result in undue prejudice of Nashville. *Nashville Lumbermen's Club v. L. & N. R. R. Co.* 59 (61).

New Albany, Miss.: Rate on live stock from New Albany, Miss., to East St. Louis, Ill., found unjustly discriminatory in comparison with lower rates from other Mississippi points. Reasonable rate subsequently established. *Wicker v. St. L. & S. F. R. R. Co.* 695 (697).

Pacific Coast terminals: If a coast point is receiving a lower rate than that to which it is lawfully entitled by conditions there existing it is a preference at that point that results in prejudice against higher rated points whether intermediate thereto or not. *Reopening Fourth Section Applications*, 35 (41).

PREFERENCES AND PREJUDICES—Continued.**Localities—Continued.**

Richmond, Ky.: Rates in effect on date of hearing to Richmond and to points alleged to be unduly preferred from Cincinnati and Louisville, are not shown to have subjected Richmond and its shippers to undue prejudice and disadvantage, or Winchester and other Kentucky points taking lower rates to undue preference and advantage. *Richmond Commercial Club v. L. & N. R. R. Co.* 451 (455).

Rockford and Kentmere, Del., held subjected to undue prejudice, and Philadelphia and Eddystone, Pa., and Millville, N. J., unduly preferred by rates on cotton piece goods in bales from producing points in New England. *Bancroft & Sons Co. v. N. Y., N. H. & H. R. R. Co.* 411.

Roseville, Ohio: Rate on brick from Roseville, Ohio, to Huntington, W. Va., found not unreasonable, but unduly prejudicial to extent that it exceeds rates from New Lexington, Crooksville, and Shawnee, Ohio. *Hydraulic-Press Brick Co. v. P. Co.* 669.

Sand Springs, Okla.: Relation of rates on glass fruit jars and jelly glasses to Pacific Coast Terminals held unduly prejudicial to Sand Springs and unduly preferential of Muncie, Ind., Wheeling, W. Va., and Washington, Pa. *Kerr & Co. v. S. S. Ry. Co.* 291, 294.

Sioux City, Iowa: That the changed relationships arising out of the Nebraska commission's general order No. 19 have resulted in undue prejudice to Sioux City, is frankly conceded. *The Missouri River-Nebraska Cases*, 201 (221, 222).

Sioux City, Iowa: Rates on live stock from southwestern Minnesota and southeastern South Dakota found not to subject Sioux City to undue prejudice to the advantage of South St. Paul. *Sioux City Live Stock Exchange v. C., St. P., M. & O. Ry. Co.* 418.

Torrington, Wyo.: Rates on live stock, Torrington to Omaha, and on oil, Omaha to Torrington, found unduly prejudicial in favor of Henry, Nebr. *Town of Torrington, Wyo., v. C., B. & Q. R. R. Co.* 512.

Tulsa, Okla.: Maintenance of higher class rates from New Orleans and of higher rates on certain commodities from New Orleans and Galveston to Tulsa than to Joplin and Neosho, Mo., and other points, not shown to result in undue prejudice and disadvantage to Tulsa. *Tulsa Traffic Asso. v. A., T. & S. F. Ry. Co.* 9 (12, 14).

Virginia cities: Under the present adjustment of rates from Virginia cities to North Carolina on the one hand, and from Cincinnati and Louisville to North Carolina on the other, there is no unjust discrimination against the Virginia cities. *Corp. Comm. of Virginia v. C. & O. Ry. Co.* 24 (34).

Persons:

There being no discrimination as between patrons of Cupples Station, there is no basis for finding that an unlawful discrimination exists in favor of tenants over outside shippers or in favor of tenants and outside shippers over users of team tracks, private sidings, or other public freight stations in St. Louis. *St. Louis (Cupples Station) Terminal Regulations*, 425 (433).

Practice of the Louisville & Nashville of regularly switching for the Chesapeake & Ohio and refusing to switch competitive traffic for all other connecting rail carriers at Louisville found unduly prejudicial to such other carriers, their patrons, and their traffic. *Louisville Board of Trade v. L. & N. R. R. Co.* 679.

Charges and regulations maintained on milk and cream in carloads under the leased-car system unduly prejudice shippers of same commodities in less-than-carload lots, and are therefore unlawful. *New England Milk Case*, 699 (731).

PRESUMPTION.

Scale of weight was presumably correct. *Fissell v. B. & O. R. R. Co.* 539 (540).

PRICE.

On the whole the price paid dairy farmers in New England is as high as, or higher than, that paid to dairy farmers in New York state or other parts of the country generally. *New England Milk Case*, 699 (726).

PRIVATE SIDINGS.

If the carrier recognizes the right of a track owner to accord the use of its siding to one shipper the carrier must treat alike all users of the siding; but it is not intended to declare the existence of the right asserted by defendants or to approve the practice of owners of industrial tracks of throwing open their tracks in such a way as to make them general terminal facilities, thus investing owners with power to foster discrimination between shippers. *Bartlett Hayward Co. v. B. & O. R. R. Co.* 151 (155).

PROFIT.

Reasonableness of rates on low-grade commodities is not to be gauged by the ability or inability of shippers to market their products with profit. *Nashville Tie Co. v. L. & N. R. R. Co.* 377 (381).

PROPORTIONAL RATES.

Withdrawal of joint proportional rates on grain products to Virginia ports for export, maintained during the season of lake navigation, found justified. *Export Grain Products from Missouri River Points*, 195.

Commission not vested with authority to require the initiation of proportional rates by rail carriers in connection with a proposed carrier by water not equipped in any way for the receipt and carriage of goods. *Charleston & Norfolk S. S. Co. v. C. & O. Ry. Co.* 382 (386).

Original finding that a proportional rate from Houston, Tex., to New Orleans, La., was not so restricted or limited as to make it inapplicable as a factor in constructing a through rate to Chicago had there been no joint rate in effect, adhered to, and order awarding reparation on basis of the lower combination reentered. *Joseph Iron Co. v. M. L. & T. R. R. & S. S. Co.* 525.

Increased proportional rates on sewer pipe from Jacksonville, Fla., to Tampa, Fla., and nearby points taking Tampa rates, found justified, except that the rate to Lakeland, Fla., will be reduced. *Sewer Pipe from Jacksonville, Fla.*, 568, 572.

PROTECTION IN WINTER.

It does not appear that cheese is transported during the winter season under circumstances unlike those surrounding transportation of potatoes to warrant a charge for heated car service in one case and not in the other, when such service is requested by shipper. Charges not found unreasonable. *Cheese Dealers Asso. Co. v. A., T. & S. F. Ry. Co.* 1 (2-3).

PUBLIC STATION. *See STATION FACILITIES.***RAIL-LAKE-AND-RAIL RATES.** *See SEASON RATES.***RAILROAD COMPETITION.** *See COMPETITION (RAILROAD).***RAILROAD CONSIGNEE.**

Shipment to railroad consignee, if billing to actual destination on consignee's line is genuine, must be treated by connecting lines exactly like an ordinary commercial shipment, whatever the disposition by consignee carrier of charges that accrue for movement over its own rails. *Marquette Coal Co. v. P. R. R. Co.* 4 (6).

RATE-BREAKING POINTS.

Nashville is not a rate-breaking point, as are Ohio River crossings. The practice of breaking rates at ports and on banks of rivers where a transfer is frequently necessary has long been in vogue; but to have rates break at a particular point is not an inherent rate right. *Nashville Lumbermen's Club v. L. & N. R. R. Co.* 59 (60, 61).

REASONABLE RATES.

Section 1 contemplates that rates to be just and reasonable must be relatively fair as between localities similarly situated, as well as reasonable *per se*. Corp. Comm. of Virginia *v.* C. & O. Ry. Co. 24 (28).

Rates from Cincinnati and Louisville, applicable on through traffic from the north and west, and from the east, to Richmond, Ky., not found unreasonable *per se*. Richmond Commercial Club *v.* L. & N. R. R. Co. 451 (455, 458).

Rates to northeast Texas are admittedly such as would be considered reasonable for an average haul of from 800 to 825 miles, that being the average haul to Texas common-point territory. Rates so constructed can not be considered reasonable in so far as they are unjustly discriminatory. Dallas Chamber of Commerce *v.* A. T. & S. F. Ry. Co. 619 (644).

A shipper of milk is entitled, as a matter of law, to have his traffic move at no higher than reasonable charges, and the carrier is entitled to receive for its service no less than reasonable charges. New England Milk Case, 699 (720).

RECONSIGNMENT.

Reconsigning charge on coal from St. Clare, Ind., to Chicago, Ill., reconsigned in transit at Faithorn, Ill., to North Halsted street dock, Chicago, not found unlawful. Complainant exercised its right to reconsign under defendant's rule and made no demand for transportation beyond Faithorn before reconsignment. Western Consolidated Coal Co. *v.* C., T. H. & S. E. Ry. Co. 543, 545.

Diversion or reconsignment of flour and feed, carloads, in transit from Milwaukee, Wis., to Bridgewater, Va., should be permitted at Dayton, Va., on basis of the through rate from Milwaukee to Bridgewater, plus a maximum charge of \$2, where contents of car remain unchanged, no out-of-line haul is necessary, and request is received before arrival of car at Dayton or within a reasonable time thereafter and before it is set for delivery. Kern & Sons *v.* C., M. & St. P. Ry. Co. 552.

Carriers subject to the act may not lawfully extend reconsignment without tariff authority. *Id.* (554).

Refusal of the Washington & Old Dominion Railway to permit reconsignment of a mixed carload of flour and wheat shipped from Milwaukee, Wis., to Vienna, Va., thence to Leesburg, Va., at the through rate from Milwaukee to Leesburg, plus a charge of \$5 per car for extra services, found unreasonable. Contents of car remained unchanged, no out-of-line haul was involved, and request for reconsignment was received within a reasonable time after arrival of car at Vienna. Kern & Sons *v.* C., M. & St. P. Ry. Co. 615.

Reparation awarded on 16 carloads of range cattle from Monahans, Tex., originally consigned to Gillette, Wyo., and reconsigned to Fountain, Colo. The rate to Fountain was in violation of the long-and-short-haul rule. Prey Bros. & Cooper Live Stock Comm. Co. *v.* T. & P. Ry. Co. 658.

REDUCTION IN RATES.

Neither voluntary reductions of rates by carriers nor compulsory reductions necessarily entitle shippers at unreduced rates to reparation. Inland Seed Co. *v.* O.-W. R. R. & N. Co. 517 (521).

Through rates in effect at time complaint was filed not found unreasonable to a greater extent than reductions since made in such through rates. Graham & Gila County Traffic Asso. *v.* A. E. R. R. Co. 573 (587).

Carriers required to establish from St. Louis to points in northeast Texas rates which, with exceptions stated, shall be as much as 5 cents per 100 pounds less than rates at present in effect. Rates from Kansas City also readjusted with relation to St. Louis. Dallas Chamber of Commerce *v.* A., T. & S. F. Ry. Co. 619 (644, 645).

REFRIGERATION.

Tariffs should indicate clearly in what instances and under what conditions refrigeration will be furnished for less-than-carload freight; and where such service is rendered and charges are assessed therefor the tariff should so provide, stating the amount of the charges. *Sulzberger & Sons Co. v. M., St. P. & S. S. M. Ry. Co.* 173 (175).

Refrigeration charges on fruits and vegetables from California to points on the Globe division of the Arizona Eastern R. R., not found unreasonable. *Graham & Gila County Traffic Asso. v. A. E. R. R. Co.* 573 (580).

REFRIGERATOR CARS.

Rental charge of \$5 per car per trip, when ordered by shippers, during months when a heated-car service was necessary, held not unlawful or unjustly discriminatory. *North Pacific Fruit Distributors v. N. P. Ry. Co.* 191.

REHEARING.

Joint rates not attacked until petition for rehearing was filed more than two years after shipments moved. Claim for reparation is barred. *Cherokee Lumber Co. v. A. C. L. R. R. Co.* 86 (87).

Findings in original report that official classification rating of fiber furniture was unreasonable and unduly prejudicial, reversed on rehearing and complaint dismissed. *Michigan Seating Co. v. G. T. W. Ry. Co.* 503 (505).

Original decision that complainant had not proved damage on account of an unduly prejudicial class A rate of 32 cents on paper stock from Columbus, Ga., to Cincinnati and Lockland, Ohio affirmed. *Friedlaender & Co. v. C. of G. Ry. Co.* 506.

Parties unable to agree as to intermediate rates upon basis of which reparation should be awarded, and case was reheard for purpose of settling the question. *Lee Co. v. C., R. I. & P. Ry. Co.* 507.

Reparation found due in original report not awarded, as record was insufficient. Upon further hearing reparation on corn and oats from Omaha and South Omaha, Nebr., and Council Bluffs, Iowa, to Missouri points, awarded. *Omaha Grain Exchange v. C. & A. R. R. Co.* 523.

Rates on fertilizer from Mount Pleasant, Tenn., to Purvis, Richburg, and Petal, Miss., found unreasonable to extent that it exceeded the rate to Hattiesburg and Lumberton, Miss. So much of the original report and order as conflicts with this conclusion rescinded and vacated. *Mount Pleasant Fertilizer Co. v. N. O. & N. E. R. R. Co.* 698.

REICING.

Reicing charge at Montgomery, Ala., on a less-than-carload shipment of cheese from Marshfield, Wis., to Pensacola, Fla., assessed without tariff authority, found unreasonable and reparation awarded. *Sulzberger & Sons Co. v. M., St. P. & S. S. M. Ry. Co.* 173, 174.

RELATIVE ADJUSTMENT. See also DIFFERENTIALS; PREFERENCES AND PREJUDICES (LOCALITIES).

Helen, Ga.: Rates on lumber from Helen, Ga., to Cincinnati should not exceed those from Murphy, N. C., by more than 3 cents per 100 pounds; and carriers should readjust their rates to other Ohio River crossings in accordance with the present relationship between said crossings in rates from Georgia and from North Carolina. *Byrd-Matthews Lumber Co. v. G. & N. W. R. R. Co.* 116 (120-121).

One adjustment is not necessarily determinative of another. *Galloway Coal Co. v. A. G. S. R. R. Co.* 311 (323).

Changes in through rates from Cincinnati and Chicago to Louisiana points should be made without any undue or unnecessary disturbance of present relative adjustments. *Procter & Gamble Distributing Co. v. A. & V. Ry. Co.* 367 (372).

RELATIVE ADJUSTMENT—Continued.

Texas cities: Dallas and Fort Worth may fairly claim that rates to these Texas cities should bear a fair and reasonable relation to rates to Texarkana and Shreveport. *Dallas Chamber of Commerce v. A., T. & S. F. Ry. Co.* 619 (635).

RELATIVE RATES. See also PREFERENCES AND PREJUDICES (LOCALITIES).

Benton, Ark.: Rate on yellow-pine lumber from Benton to Memphis, Tenn., not found intrinsically unreasonable as compared with a lower rate from Little Rock. *Lena Lumber Co. v. C., R. I. & P. Ry. Co.* 515 (516).

Cape Charles, Va.: Rates from Cape Charles, Va., to Chicago, constructed on basis of arbitraries over the Philadelphia rates to Chicago, not found unreasonable. *Eastern Shore of Virginia Produce Exchange v. N. Y., P. & N. R. R. Co.* 328 (333).

Globe, Ariz.: Rates applicable to interstate traffic on the Globe division of the Arizona Eastern R. R., including rates from California to points on the Globe division, not found unreasonable. They compare favorably with class rates over other lines in same general territory. *Graham & Gila County Traffic Asso. v. A. E. R. R. Co.* 573 (579).

In general: In determining reasonableness of rates, due consideration of their relation to other rates of the various carriers serving the same or competing localities should be given. *Corp. Comm. of Virginia v. C. & O. Ry. Co.* 24 (28).

In general: Whatever disadvantages may result from the adjustment between the rivers, it is clear that they can not properly be used as a basis for securing compensating advantages in a different territory. *The Missouri River-Nebraska Cases*, 201 (260).

Keokuk, Iowa: Rate on rolled oats from Keokuk, Iowa, to Denver and Pueblo, Colo., not found unreasonable as compared with lower rates on rolled oats in western trunk line and trans-Missouri territories, and corn and its products between Keokuk and Colorado common points. *Purity Oats Co. v. C., B. & Q. R. R. Co.* 531, 532.

La Moure and Berlin, N. Dak.: Rates from points in Michigan, Tennessee, Indiana, and Illinois to La Moure and Berlin not found unreasonable by comparison with rates to Edgeley, N. Dak., a more distant point. *Young v. L. & N. R. R. Co.* 308.

Missouri River cities: Rate comparisons showing the relation of rates as between Council Bluffs, Sioux City, St. Joseph, Kansas City, Atchison, and Denver and the competing Nebraska centers of distribution, and outlining former adjustment of rates as well as the readjustments which have resulted from the Nebraska commission's general order No. 19 and which have increased the rate differences in favor of the Nebraska cities in respect to traffic to points in that state, considered. *The Missouri River-Nebraska Cases*, 201 (212-239).

Mount Pleasant, Tenn.: Rates on fertilizer from Mount Pleasant to Purvis, Richburg, and Petal, Miss., found unreasonable in comparison with rates to Hattiesburg and Lumberton, Miss. *Mount Pleasant Fertilizer Co. v. N. O. & N. E. R. R. Co.* 698.

New England points: Rates on cotton piece goods in bales from, to Rockford and Kentmere, Del., are not unreasonable *per se*, but are found unjustly discriminatory as compared with rates to Philadelphia, Eddystone, and Millville. *Bancroft & Sons Co. v. N. Y., N. H. & H. R. R. Co.* 411 (417).

New Orleans, La.: The record does not afford a basis for determining what difference should be made in rates on grain and grain products from New Orleans to Carolina territory as compared with those from Memphis. *Grain from New Orleans, La.*, 654 (658).

RELATIVE RATES—Continued.

Sheldon, Iowa: Rates on soft drinks from Sheldon to various Minnesota points, and on empty bottles returned to Sheldon, not found unreasonable as compared with rates to and from Sioux City and other Iowa points. *Sheldon Bottling Works v. C., R. I. & P. Ry. Co.* 527.

Springfield, Ohio: Springfield is on the Dayton basis with respect to class rates to Chicago and Milwaukee, and no convincing reason appears for excluding it from the so-called Chicago-Ohio River adjustment in which it has been included for several years. *Hides from Springfield, Ohio*, 305 (307).

Texas points, northeast: As to traffic from St. Louis and Kansas City to points in northeast Texas, those points are at a disadvantage as compared with Shreveport, a competing locality, by reason of the shorter distance to Shreveport, and competitive conditions at that point, but that natural disadvantage ought not to be unduly increased by an artificial rate adjustment. *Dallas Chamber of Commerce v. A., T. & S. F. Ry. Co.* 619 (644).

Tulsa, Okla.: No justification appears for the maintenance of a rate of 89 cents on pineapples from New Orleans to Tulsa and Oklahoma City as compared with 63 cents to Muskogee, and there should be a readjustment. *Tulsa Traffic Asso. v. A., T. & S. F. Ry. Co.* 9 (14).

Virginia cities: Class rates from Virginia cities to points in North Carolina territory involved not found unreasonable in themselves or relatively. *Corp. Comm. of Virginia v. C. & O. Ry. Co.* 24 (34).

RENTAL CHARGES.

A rental charge of \$5 per car per trip for use of refrigerator or insulated car, when ordered by shippers, in transportation of fresh deciduous fruits from the northwest during months when heated car service is necessary held not unlawful or unjustly discriminatory. *North Pacific Fruit Distributors v. N. P. Ry. Co.* 191.

RES ADJUDICATA.

One adjustment is not necessarily determinative of another. *Galloway Coal Co. v. A. G. S. R. R. Co.* 311 (323).

RESTORED RATES.

While the fact that a rate or body of rates has been in effect for a considerable period of time may be strongly persuasive of the reasonableness of such a rate or rates, the mere reestablishment of a former rate structure is insufficient to satisfy the requirements of the statute. *Pacific Coast-Southwest Lumber*, 387 (394).

Rates charged on yellow-pine lumber from Climax, Ala., a nonagency station, to Nashville, Tenn., found unreasonable. Rate formerly in effect prescribed for future and reparation awarded. *Boyd v. A., T. & N. R. R. Co.* 535, 536.

REVERSAL. See **REHEARING**.

ROUND-TRIP TICKET. See **TICKET**.

ROUTES.

Cancellation of joint rates from points in Kansas and Missouri by way of Bridge Junction, Ark., to points in Arkansas west and south of Little Rock, including Little Rock, restricting their application to the route through Wister, Okla., justified in part, to wit, where the difference in distance in favor of the Wister route is too substantial to be disregarded. *Grain to Arkansas Points*, 49 (52).

The route over the L. & N. and T., A. & G. railroads from Ironaton and Shelby, Ala., to Chattanooga and Boyce, Tenn., affords an adequate service for all the traffic offered, and establishment of additional routes not justified. *Chattanooga Implement & Mfg. Co. v. L. & N. R. R. Co.* 146 (148).

Changes in routing of grain and grain products from points on the St. L. & S. F. R. R. to the Gulf ports for export found justified. Routes proposed would not as a whole be unreasonably long in comparison with present routes, and are practicable. *Export Grain to Gulf Ports*, 280.

ROUTES—Continued.

Joint rate on lumber from Jacksonville, Fla., to North Wales, Pa., higher than joint rates, constructed on the usual basis, applicable via other routes, found unreasonable and reparation awarded. *Lukens Lumber Co. v. A. C. L. R. R. Co.* 295 (296).

Rate on gum lumber from Morgan City, La., to Port Arthur, Tex., delivered by the Texarkana & Fort Smith Railway, not found unreasonable as compared with a lower rate applicable only on shipments for Texas & New Orleans delivery. *Waddell-Williams Lumber Co. v. M. L. & T. R. R. & S. S. Co.* 402.

Rate on sulphuric acid from Louviers, Colo., to Port Arthur, Tex., found unreasonable to extent that it exceeded the rate subsequently established over route of movement. The difference in distances over route of movement and over route by which the lower rate applied was about 6 miles. *Western Chemical Mfg. Co. v. D. & R. G. R. R. Co.* 529, 530.

Rate on live hogs from Sioux City, Iowa, to East St. Louis, Ill., not found unreasonable. The existence of a lower rate for other routes and the subsequent establishment of that rate for route of movement do not of themselves warrant condemnation of the rate charged. Complainant could have used other routes, but chose the one over which shipment moved. *Armour & Co. v. C. & N. W. Ry. Co.* 609, 610.

SAMPLE CASES. *See* **BAGGAGE.**

SCALE WEIGHT.

Was presumably correct. *Fissell v. B. & O. R. R. Co.* 539 (540).

SEASON RATES.

Rates on grain products from Missouri River cities to Virginia ports are equalized during the season of open navigation with the rail-lake-and-rail rates in effect to Baltimore; and are likewise equalized with the all-rail rates via Chicago to Baltimore during the season of closed navigation on the lakes. *Export Grain Products from Missouri River Points*, 195 (198).

SECONDHAND.

Rates on secondhand iron and steel drums from Chicago, Ill., Atlanta, Ga., and Kansas City, Mo., to Dallas, Tex., not found unreasonable. Contention that secondhand articles should be rated lower than same articles when new not sustained. *Tex-O-Cide Chemical Co. v. T. & P. Ry. Co.* 594, 596.

SECTION 1.

Contemplates that rates to be just and reasonable must be relatively fair as between localities similarly situated, as well as reasonable *per se*. *Corp. Comm. of Virginia v. C. & O. Ry. Co.* 24 (28).

Section 1 not changed or modified by the amendment of August 24, 1912, with respect to the agency of transportation over which the act confers regulatory authority upon this Commission. *Charleston & Norfolk S. S. Co. v. C. & O. Ry. Co.* 382 (385).

SECTION 2. *See also* **DISCRIMINATION.**

Expressly prohibits a carrier from charging a greater or less compensation for a like and contemporaneous service dependent upon the individual served. *Bartlett Hayward Co. v. B. & O. R. R. Co.* 151 (155).

SECTION 3. *See also* **PREFERENCES AND PREJUDICES.**

Small disadvantages to one point or another incident to group adjustments do not constitute the undue prejudice made unlawful by section 3. *Connor Lumber & Land Co. v. A., C. & Y. Ry. Co.* 111 (113).

The use of tracks or terminal facilities referred to in section 3 is not limited to physical entry upon such tracks or terminal facilities by the power, equipment, or employees of another carrier. *Louisville Board of Trade v. L. & N. R. R. Co.* 679 (690).

SECTION 4. *See also* LONG AND SHORT HAUL; THROUGH AND LOCAL.

Must be construed in the light of other sections and in view also of the purpose and intent of this particular section. Reopening Fourth Section Applications, 35 (40).

Does not repeal or annul any part of the second and third sections. *Id.* (41).

That portion empowering the Commission to prescribe the extent to which carrier may be relieved from the requirements of the section seems to contemplate a certain flexibility in rates at competitive points varying with the degree of competition there found. *Id.* (41).

Changed conditions other than the elimination of water competition, shown. Export Grain Products from Missouri River Points, 195 (200).

SECTION 6.

Amendment of August 24, 1912, construed. *Charleston & Norfolk S. S. Co. v. C. & O. Ry. Co.* 382 (384).

SECTION 15.

Mere absence of injury to complainants does not excuse defendants' failure to observe the requirements of, against disclosure of information. *Nashville Abattoir, Hide & Melting Asso. v. L. & N. R. R. Co.* 134 (137).

The maintenance of joint rates here involved was not specifically required within the meaning of section 15, and the Commission can not fix divisions thereof. *Morgantown & Kingwood Divisions*, 509 (511).

Contains a recognition of carrier's right to utilize to its own interest the entire road haul that it can perform, so long as it does not result in an unreasonable route. *Louisville Board of Trade v. L. & N. R. R. Co.* 679 (689).

SECTION 20.

Effect of the Cummins amendment. *National Society of Record Assos. v. A. & R. R. R. Co.* 347 (351-352).

SECTION 22.

Commission has authority to prescribe reasonable ratings on articles transported for the government although, under section 22, the carrier and the government may agree upon some other rate. *United States v. A. & V. Ry. Co.* 405 (406).

SHORT HAUL.

Maintenance of route via Odem, Tex., results in short hauling the originating carrier. The route via Houston, Tex., is reasonable. Cancellation of joint rates via Odem found justified. *Fruits and Vegetables from Texas Points*, 673 (674).

SOLVENCY.

It is not the function of the Commission to determine whether one or more of several carriers from whom reparation is found due is solvent or insolvent. *Riverside Mills v. A. & S. Steamboat Co.* 501 (502).

SPECIAL DOCKET.

Where carriers are willing to make reparation on shipments of pig iron involved to points not in central freight association territory, applications for permission to do so should be submitted on the special docket. In certain other cases applications for permission to make reparation will be considered on the special docket. *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.* 738 (739-741).

SPECIAL EQUIPMENT.

Refusal of defendants to provide cars specially equipped with hooks and racks for the transportation of chilled and frozen meats not found unreasonable or unduly prejudicial. It is held unnecessary to await final determination of Commission's authority to require defendants to provide such special equipment. *Frankfeld & Co. v. N. Y. C. R. R. Co.* 555, 558.

STATE RATES.

Arkansas: It has long been the settled doctrine that where shipments moved in the course of the journey across the State line into another State in order to reach destinations in the state of origin the interstate rates were applicable. *Louisiana & Pine Bluffs Divisions*, 470 (472).

Illinois: Grain originating in Illinois, shipped locally intrastate to Chicago, there sold, and subsequently shipped under local rates to interstate destinations, is subject to local intrastate rates from points of origin to Chicago. *Illinois Grain to Chicago*, 124.

Iowa: Power of state authorities to prescribe and regulate rates for carriage of freight locally within the state is indisputable, and it is only where the proper application of those rates operates to the disadvantage or prejudice of an interstate shipper that Commission's authority to remove discrimination should be exercised. *Iowa-Dakota Grain Co. v. I. C. R. R. Co.* 73 (75).

Iowa: Inbound intrastate rates, used as one component of the through rate on corn from interior Iowa points to final destination, was not lawfully applicable to the through interstate movement. *Iowa-Dakota Grain Co. v. I. C. R. R. Co.* 73 (76).

Minnesota: Premise that the Minnesota rates have been held nonconfiscatory and that therefore rates to St. Paul are prima facie reasonable and afford a fair standard of reasonableness for rates from same territory to Sioux City is not tenable, since a rate may be nonconfiscatory and at the same time too low to be reasonably remunerative. *Sioux City Live Stock Exchange v. C., St. P., M. & O. Ry. Co.* 418 (420).

Nebraska: Whether Nebraska intrastate rates yield the carriers a fair return upon the property devoted to intrastate traffic is a question for the courts. *The Missouri River-Nebraska Cases*, 201 (253).

Nebraska: Rates on live stock, Torrington, Wyo., to Omaha, Nebr., and on oil, Omaha to Torrington, found unduly prejudicial in favor of Henry, Nebr. *Town of Torrington, Wyo. v. C., B. & Q. R. R. Co.* 512.

New York: Purely intrastate rates can not lawfully be included among rates aggregated for comparison with an interstate joint rate unless they are available for interstate application. *Malone v. New York Telephone Co.* 185 (188).

North Carolina: State-made rates as a standard of reasonableness are entitled to weight in connection with interstate rate considerations. No discrimination against the Virginia cities appears as between interstate rates on the one hand and North Carolina intrastate rates on the other. *Corp. Comm. of Virginia v. C. & O. Ry. Co.* 24 (32, 33).

North Dakota: Combination rate on plate-iron culverts from Fargo, N. Dak., to Arnegard, N. Dak., via an interstate route, not found unreasonable in comparison with intrastate rates and rates between points not in the immediate territory traversed by shipments in question. *North Dakota Metal Culvert Co. v. G. N. Ry. Co.* 537, 538.

Texas: Commission can make no finding that proposed rate on cement from Ada, Okla., to Chillicothe, Odell, and Round Timber, Tex., would be reasonable merely because it does not exceed an intrastate distance rate for approximately the same distance. *Cement to Texas Points*, 94 (99-100).

Texas: Respondents' apprehension that the Texas commission might be induced to adopt retaliatory measures in the form of prescribing "emergency or penalty rates" for intrastate traffic unless rates on cement from Ada, Okla., were increased or withdrawn is no justification for cancellation of all rates on cement from Ada or for the establishment of increased rates to certain points. *Id.* (100).

STATION FACILITIES.

The criterion of a place being a public station is the offer and capacity adequately to serve, without discrimination. *St. Louis (Cupples Station) Terminal Regulations*, 425 (430).

Commission held in a former case that it would not assume authority to outlaw any common carrier by rail at common law, as modified by constitutional or statutory authority, and thus put it out of business or deny its use to the public, so long as it is willing to hold itself out as a common carrier and perform its functions as such, and must hold the same opinion with respect to a necessary instrumentality of that service. *Id.* (431).

STOCKYARDS.

In many places live stock is delivered and received at two or more stockyards in the same city; but no rule of universal application can be laid down. There is here no showing that public necessity or convenience would be served or promoted by requiring the establishment of a second live-stock terminal at Nashville. *Nashville Abattoir, Hide & Melting Assn. v. L. & N. R. R. Co.* 134 (141).

STORAGE.

Increased charges for storage of domestic and export freight held at New York harbor points in pier warehouses owned or controlled by carriers, intended to compel the removal of freight within a reasonable period after it is tendered to consignee for delivery, found justified. *New York Storage*, 265.

When carriers have offered shippers a reasonable storage period at reasonable charges they have satisfied all the requirements of the law. *Id.* (267).

Carriers are not obliged to provide storage in cars, and consignee has no legal right to use a car as a warehouse. The business of a railroad is transportation, not storage; and storage at destination is a service not embraced in the rate for which additional compensation may be exacted. *Pittsburgh & Ohio Mining Co. v. B. & O. R. R. Co.* 408 (409).

SUBSEQUENTLY ESTABLISHED RATES.

Rate on gum lumber from Morgan City, La., to Port Arthur, Tex., not found unreasonable as compared with a subsequently established rate via route of movement said to have been reduced solely for the purpose of enabling complainant to obtain reparation. *Waddell-Williams Lumber Co. v. M. L. & T. R. R. & S. S. Co.*, 402 (404).

Rate on sulphuric acid from Louviers, Colo., to Port Arthur, Tex., found unreasonable to extent that it exceeded the rate via another route and subsequently established over the route of movement. Reparation awarded. *Western Chemical Mfg. Co. v. D. & R. G. R. R. Co.*, 529.

Rate of \$80 per car on live stock from New Albany, Miss., to East St. Louis, Ill., found unreasonable and unjustly discriminatory to extent that it exceeded the subsequently established rate of \$59 per car 36 feet 6 inches or under in length, subject to rule 24 of southern classification. Reparation awarded. *Wicker v. St. L. & S. F. R. R. Co.*, 695.

SWITCHING.

Shipments of contractors' outfits from Grayland, Ill., which were in no way connected with the business of the industry from whose tracks they moved were in the nature of "general traffic which should be handled through the public facilities of the carrier;" and switching charges thereon not found unreasonable. *Bartlett Hayward Co. v. B. & O. R. R. Co.* 151 (155).

SWITCHING—Continued.

Carriers should endeavor to conduct their switching operations for other carriers without loss, and charges for their services based on cost are preferable to nominal charges based on so-called reciprocity in service. *Nashville Switching*, 474 (481).

Different switching charges at competing points may be entirely equitable. *Id.* (482).

Charge of \$7.50 per car proposed by the Nashville Terminals for switching at Nashville, Tenn., found unreasonable to extent that it exceeds \$5 per car. The \$5 charge thus found reasonable must be understood to relate exclusively to Nashville. *Id.* (482).

Switching at Paducah as a part of interstate transportation of traffic originating in Tennessee is subject to the Commission's jurisdiction. *Mutual Wheel Co. v. N., C. & St. L. Ry.* 612 (613).

Charge of \$7 per car imposed by the N., C. & St. L. Ry. for switching logs, bolts, or billets, originating in Tennessee, from its Tennessee River incline to complainant's plant located on tracks of the I. C. R. R. found unjustly discriminatory to extent that it exceeded by more than \$2 per car the charge maintained at Paducah by the N., C. & St. L. for switching from its Tennessee River incline to industries located on its own rails. *Mutual Wheel Co. v. N., C. & St. L. Ry.* 612 (614).

Practice of the Louisville & Nashville of regularly switching for the Chesapeake & Ohio and refusing to switch competitive traffic for all other connecting rail carriers at Louisville found unduly prejudicial to such other carriers, their patrons, and their traffic. *Louisville Board of Trade v. L. & N. R. R. Co.* 679.

SYSTEM.

Rates between Sioux City and stations on the C. & N. W. should be made by application of the single-line scale, for the C., St. P., M. & O and the C. & N. W., although separately operated, are under the same management and control. *The Missouri River-Nebraska Cases*, 201 (257).

Provisions of the act against unjust discrimination speak to carriers of the country individually and with respect to those things for which they are individually responsible, and not to the carriers as parts of a single great system. *Galloway Coal Co. v. A. G. S. R. R. Co.* 311 (315).

TAP LINES.

An out of line or diverted movement to a track scale may not properly be included when fixing the switching allowance or division that a tap line may receive from its trunk line connections. *Louisiana & Pine Bluffs Divisions*, 470.

No warrant is found for requiring trunk lines against their will to establish milling in transit with tap lines, under which rates on lumber applying from mill points will be readjusted. *Milling Logs in Transit on Tap Lines*, 597 (601).

TARIFFS.

Where refrigeration service is rendered and charges are assessed therefor the tariff should so provide, stating the amount of the charges. *Sulzberger & Sons Co. v. M., St. P. & S. S. M. Ry. Co.* 173 (175).

Defendant's attention directed to requirements of the act, particularly of section 6, to rule 10 (a) and rule 74 of Tariff Circular 18-A, and to provisions of the Elkins act respecting failure of common carriers subject to the act to publish their tariffs as therein required. Carriers subject to the act may not lawfully extend reconsignment without tariff authority. *Kern & Sons v. C., M. & St. P. Ry. Co.* 552 (554).

TEAM TRACKS. See TERMINAL FACILITIES.

TELEPHONE SERVICE.

Through calls at combination rates require fewer terminal services than separate calls under rates combined, and combination through rates that include charges for terminal service not performed are unreasonable. *Malone v. New York Telephone Co.* 185.

The act expressly authorizes reasonable classification of telephone messages and charges, and as toll service differs substantially from local service it may reasonably be rated higher. The single fact, therefore, that defendants charged more for toll calls than for local calls is not enough to prove that the through rate charged for complainant's calls was unreasonable. *Id.* (187-188).

Through rate charged complainant held unreasonably high to the extent of 5 cents for three-minute calls and defendants are authorized to waive the excess of charges due over charges that would have accrued at the rate herein found reasonable. *Id.* (189).

Reasonableness of contract provision under which complainant's telephone service was discontinued not determined. *Id.* (190).

TERMINAL CHARGES.

Where charges for a particular terminal service, such as lightering, have been absorbed and it is proposed to maintain the same rates to or from the terminal but to add thereto what the carriers consider to be a reasonable charge for the service, it should be affirmatively shown not only that the terminal charge, considered alone, is reasonable, but also that the through charge is reasonable. *Manure from Jersey City, N. J.*, 465 (469).

TERMINAL FACILITIES.

Commission not warranted, merely because phases of the situation at Cupples Station are unusual, in condemning an arrangement that seems to be of substantial benefit to the city of St. Louis. Team-track facilities are now inadequate for the city's needs, and expeditious handling at the Cupples Station is an important factor in the prevention and relief of congestion of the city's team tracks as a whole. *St. Louis (Cupples Station) Terminal Regulations*, 425 (433).

The use of tracks or terminal facilities referred to in section 3 is not limited to physical entry upon such tracks or terminal facilities by the power, equipment, or employees of another carrier. *Louisville Board of Trade v. L. & N. R. R. Co.* 679 (690).

TERMINAL RATES.

Rate on coal from Chicago, Ill., to Oakdale, Cal., based on the rate to San Francisco plus 75 per cent of the local rate back, not found unreasonable. *Berry Coal & Coke Co. v. C., R. I. & P. Ry. Co.* 175 (176).

TERMINAL SERVICE.

Terminal services are rendered irrespective of the length of haul. *The Missouri River-Nebraska Cases*, 201 (256).

TERMINAL SWITCHING.

Practice of the Louisville & Nashville of regularly switching at Louisville both competitive and noncompetitive traffic, inbound or outbound, to or from industries on its terminals, for the Chesapeake & Ohio, and refusing to switch competitive traffic for all other connecting rail carriers at Louisville, found unduly prejudicial. *Louisville Board of Trade v. L. & N. R. R. Co.* 679 (690).

TEST SHIPMENT. See PAPER RATES.**TEXAS COMMON POINTS.**

It is evident that any attempt on the part of the Commission to satisfy in any material manner the present complaint involves the eventual breaking up of the Texas common-point group. *Dallas Chamber of Commerce v. A., T. & S. F. Ry. Co.* 619 (636).

THROUGH AND LOCAL.

Reparation awarded on lumber from Wilmington, N. C., to Roanoke, Va., which moved through Altavista and Jarratt, Va., at joint rates which exceeded the Altavista and Jarratt combinations and which were therefore prima facie unreasonable. *Woodson & Graves v. Virginian Ry. Co.* 80.

The Flushing-Manhattan component of the through charge for telephone calls from Flushing, N. Y., to Canaan, N. H., exceeded the charge for local calls, Flushing to Manhattan; but the aggregate of intermediate rates rule is not violated, because the intermediate rates between two points whose aggregate can not legally be exceeded by a joint rate must apply to the same kind of service as the joint rate. *Malone v. New York Telephone Co.* 185 (188).

Purely intrastate rates can not lawfully be included among rates aggregated unless they are available for interstate application. *Id.* (188).

Through rates which exceed combination rates on file with the Commission to be applied when no through rates are published are in violation of the intermediate clause of section 4. Increased rates which exceed the aggregate of intermediate rates subject to the act, not justified. *Rice from Texas and Louisiana*, 285 (290).

Finding of Commission in *Through Rates to Points in Louisiana and Texas*, 38 I. C. C., 153, disposes of allegation that through rates on soap, soap powder, cleansing powder, and lard substitute from Ivorydale and St. Bernard, suburbs of Cincinnati, Ohio, and from Kansas City, Mo.-Kans., to points in Louisiana exceed the aggregate of intermediate rates. *Procter & Gamble Distributing Co. v. A. & V. Ry. Co.* 367 (369).

Finding of Commission in *Through Rates to Points in Louisiana and Texas*, 38 I. C. C., 153, disposes of allegations herein made respecting the reasonableness of through rates on lard substitute from Macon, Ga., to Louisiana points, their discriminatory character, and violations of the aggregates of intermediates rule. *Procter & Gamble Distributing Co. v. A. & V. Ry. Co.* 373 (375).

Original finding that a proportional rate from Houston, Tex., to New Orleans, La., was not so restricted or limited as to make it inapplicable as a factor in constructing a through rate to Chicago had there been no joint rate in effect, and that the joint rate was unreasonable to extent that it exceeded the combination rate, adhered to, and order for reparation reentered. *Joseph Iron Co. v. M. L. & T. R. R. & S. S. Co.* 525.

Combination rate charged instead of higher through rate applicable; but the discrepancy between the through rate and the aggregate of intermediate rates was not protected by a fourth section application, and the through rate is unlawful. *North Dakota Metal Culvert Co. v. G. N. Ry. Co.* 537, 538.

Under a tariff rule to the effect that where the aggregate of intermediate rates made less than the joint through rate the former should be applied as the lawful rate, alleged violations of the fourth section could not occur. *Graham & Gila County Traffic Asso. v. A. E. R. R. Co.* 573 (583).

Rates on woodworking machinery, stoves, and cement from St. Louis, Mo., to Huttig, Ark., found unreasonable to extent that they exceeded the aggregate of intermediate rates based on Litroe, La. Reparation awarded. *Union Lumber Co. v. St. L., I. M. & S. Ry. Co.* 661 (665).

Rate on shovels from Piqua, Ohio, to Fort Dodge, Iowa, found unreasonable to extent that it exceeded the aggregate of intermediate rates to and from Chicago, Ill. Reparation awarded. *Prusia Hardware Co. v. C., H. & D. Ry. Co.* 747.

THROUGH RATES.

Divisions received by participating carriers are not controlling in determining the reasonableness of the through rate as a whole. *Dyes from New York, N. Y.*, 546 (549).

THROUGH RATES—Continued.

Through class and commodity rates from eastern territories to points on the Globe Division of the Arizona Eastern R. R., in effect at time complaint was filed, as applied under tariff rule making the combination rate applicable whenever lower than the through rate, not found unreasonable to a greater extent than reductions since made in such through rates. *Graham & Gila County Traffic Asso. v. A. E. R. R. Co.* 573 (586-587).

Where through rates are made by combination of local rates and one of these local rates is found to be unreasonable, it is inferable that through rates that are made by use of this unreasonable component are unreasonable. *Dallas Chamber of Commerce v. A., T. & S. F. Ry. Co.* 619 (643).

THROUGH ROUTES AND JOINT RATES.

It is not within Commission's authority to establish through routes and joint rates in a proceeding which does not involve the specific question. *Graham & Gila County Traffic Asso. v. A. E. R. R. Co.* 573 (578).

Cancellation of joint rates on fruits and vegetables from points on the St. Louis, Brownsville & Mexico Railway applicable via Odem, Tex., found justified. The route via Houston, Tex., is reasonable, and the Commission has no power to prevent the cancellation of through routes and joint rates which it could not order established. *Fruits and Vegetables from Texas Points* 673 (674).

Present rate on potatoes from eastern shore points is established upon a package basis, while rates south from Norfolk are generally published per 100 pounds. Defendants will be expected to establish joint rates on the basis of the combination of rates now in effect to and from Norfolk. *Eastern Shore of Virginia Produce Exchange v. N. Y., P. & N. R. R. Co.* 750 (755).

TICKET.

Refusal of defendant to honor return portion of a round-trip ticket from Los Angeles to Salt Lake City not found unreasonable. Although defendant's line was washed out and traffic suspended temporarily, it was in operation before ticket ceased to be good. Complainant held entitled to refund on the unused portion. *Curl v. S. P., L. A. & S. L. R. R. Co.* 65, 66.

TON PER MILE REVENUE.

Average revenue per ton-mile of western roads is generally in excess of the average revenue per ton-mile of roads in the east. *Providence Fruit & Produce Exchange v. M., St. P. & S. S. M. Ry. Co.* 45 (47).

Former finding that ton-mile earnings on phosphate rock should almost always be lower than the average receipts from all sources, referred to. *Swift & Co. v. L. & N. R. R. Co.* 56 (58).

The bare comparison of ton-mile earnings as made by protestant is inconclusive upon the question of reasonableness. *Export Grain Products from Missouri River Points*, 195 (197).

TONNAGE.

Market conditions doubtless are more strongly reflected than rates in the relative live-stock tonnage to the two markets of Sioux City and South St. Paul. *Sioux City Live Stock Exchange v. C., St. P., M. & O. Ry. Co.* 418 (423).

TRACKAGE AGREEMENT.

Trackage agreement under which the Chesapeake & Ohio operates between Lexington and Louisville over rails owned by the Louisville & Nashville, discussed. *Louisville Board of Trade v. L. & N. R. R. Co.* 679 (685-686).

TRAIN SPEED.

Speed of milk trains to New York City and that of trains to Boston, considered. *New England Milk Case*, 699 (718).

TRANSFER.

Divisions of joint rail-lake-and-rail rates prescribed. Cost of transfer should be borne by carriers subject to that expense. *Port Huron & Duluth S. S. Co. v. P. R. R. Co.* 335 (344-346).

TRANSIT ARRANGEMENTS.

Dressing in transit: Lumber from Carloss Spur, Ala., to Chicago and Indianapolis, dressed in transit at Northport, Ala., found to have been overcharged; but the through rate was not found unreasonable, the failure of complainant to avail himself of transit service at Tuscaloosa not explained, and the absence of transit service at Northport not found unduly prejudicial. *Jefferson Lumber Co. v. M. & O. R. R. Co.* 43 (44).

Fabrication in transit: Testimony of carriers indicates that they have no good ground for denying the fabricating-in-transit provision at Dallas and Fort Worth or other points in Texas where this service may be desired. *Dallas Chamber of Commerce v. A., T. & S. F. Ry. Co.* 619 (646).

Milling in transit: Rate on wheat from East St. Louis, Ill., milled into flour at Cairo, and transported thence to Port Chalmette, La., for export, found unreasonable to extent that it exceeded the rate on flour, for export, plus one-half cent per 100 pounds. Reparation awarded but no orders for future entered as transit service involved is now published. *Cairo Milling Co. v. M. & O. R. R. Co.* 20.

Milling in transit: Under tariffs involved, complainants may elect as to whether they will ship grain out from Chicago at a local or a proportional rate, provided a bona fide inbound local shipment has been made and the billing has been recorded for transit. By such a practice the shipper does not change the character of the inbound shipment. *Illinois Grain to Chicago*, 124 (132).

Milling in transit: Charges on stave bolts from Louisiana points to Whiteville, La., for milling and reshipment to Constable Hook, N. J., found unreasonable and unduly prejudicial. The application of the net rate and milling rule to the shipments can not be regarded in the same light as a newly established transit arrangement. *Williams Stave Co. v. M. L. & T. R. R. & S. S. Co.* 165, 166.

Milling in transit: The mere fact that over proposed routes Oklahoma City is not intermediate to New Orleans from certain points of origin and that protestant would no longer receive transit service is not sufficient to deprive the Frisco of its long haul, and changes in routing found justified. *Export Grain to Gulf Ports*, 280 (282).

Milling in transit: Transit arrangement at Atchison and Leavenworth, Kans., on grain moving under proportional rates from Omaha, South Omaha, and Council Bluffs to and through Mississippi River crossings, is not one which respondents could have been required to establish, and which they may not continue except at the risk of unjustly discriminating against other shippers and receivers of grain; and proposed restriction of the arrangement to traffic destined to specifically indicated points found justified. *Transit at Kansas Points*, 358, 366.

Milling in transit: No warrant found for requiring trunk lines against their will to establish milling in transit with tap lines, under which rates on lumber applying from mill points will be readjusted. *Milling Logs in Transit on Tap Lines*, 597 (601).

Reshipping: Rates and regulations on lumber to Nashville, Tenn., there taken into the yards of lumber dealers and afterwards shipped out to points in official classification territory, not found unreasonable or unduly discriminatory either as compared with privileges enjoyed by Ohio River crossings or Chattanooga, Tenn., and Dalton, Ga. *Nashville Lumbermen's Club v. L. & N. R. R. Co.* 59 (61, 62).

TWO-LINE HAUL.

When it is considered that a two-line haul is involved and that one of the participating carriers is barely able to pay expenses, and that the expense of delivery which is absorbed by this carrier is said to average \$3.50 per car, the rate complained of can not be found unreasonable. *Chattanooga Implement & Mfg. Co. v. L. & N. R. R. Co.* 146 (148).

UNDERCHARGES.

Failure to apply interstate rates to Council Bluffs on corn stored in elevators there and subsequently forwarded under proportional or reshipping rates to interstate points resulted in shipments being undercharged. *Iowa-Dakota Grain Co. v. I. C. R. R. Co.* 73 (77).

Charges were collected on a shipment of gate valves with motors attached from Pittsburgh, Pa., to San Francisco, Cal., at the rate applicable to machinery, n. o. s., completely knocked down and boxed; but the rating legally applicable was the rating on machinery, n. o. s., set up, and shipment was therefore undercharged. *Alberger Pump & Condenser Co. v. A. V. Ry. Co.* 105 (108).

Combination rate charged instead of higher specific through rate applicable; but the combination rate is not found unreasonable, and the undercharge may be waived. *North Dakota Metal Culvert Co. v. G. N. Ry. Co.* 537.

UNIFORM CLASSIFICATION.

Substantial uniformity in classification ratings and exceptions on shipments from competing jobbing centers is as essential as nondiscriminatory rates. *The Missouri River-Nebraska Cases*, 201 (260).

Animals of a value above the standard or basic value should have a uniform rating commensurate with the excess value. Higher valued animals may properly take rates in excess of those for average live stock, but should not fix the standard. Standard valuations prescribed. *National Society of Record Assos. v. A. & R. R. R. Co.* 347 (352, 353).

A tariff requirement that small animals must be crated for shipment is not unreasonable, but such requirement should be made uniform. *Id.* (357).

The work of the uniform committee should not be discarded unless substantial reasons are shown. *National Commercial Fixture Mfrs. Asso. v. A. A. R. R. Co.* 484 (488).

VALUATION OF PROPERTY.

Whether a railroad is entitled to add something to the physical value of its various properties because of their unification and operation as parts of a single system is a question of valuation that has not yet been decided and which can not be decided upon the evidence here offered. *Nashville Switching*, 474 (480).

VALUE.

Value is not the sole controlling element in classification or rate making; and in the absence of a showing that the rating and rates complained of are unreasonable the contention that a schedule of rates, graduated according to value, should be established is without merit. *Western Felt Works v. Wabash R. R. Co.* 7 (8).

The value of a particular animal is not affected by crossing the line from one to another classification territory, and such animals of a value above the standard or basic value should have a uniform rating commensurate with the excess value. *National Society of Record Assos. v. A. & R. R. R. Co.* 347 (352).

Higher valued animals may properly take rates in excess of those for average live stock, but should not fix the standard. Standard valuations prescribed. *Id.* (353).

To not correctly declare the value of an animal shipped in interstate transportation, when valuation affects the rate, is a violation of the act. *Id.* (354).

